Report of the board appointed to prepare and submit recommendations to the

Secretary of the Navy

for the revision of policies, procedures, and directives dealing with homosexuals.

Report submitted to the Secretary of the Navy
by
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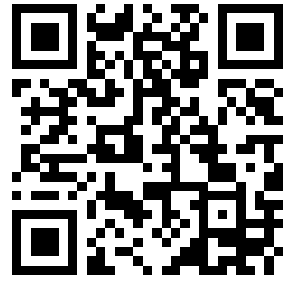

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CRITTENDON REPORT

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REPORT OF THE BOARD

APPOINTED TO PREPARE AND SUBMIT RECOMMENDATIONS

TO THE SECRETARY OF THE NAVY

FOR THE REVISION OF POLICIES, PROCEDURES AND DIRECTIVES

DEALING WITH HOMOSEXUALS

21 DECEMBER 1956 - 15 MARCH 1957

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INDEX

BOARD REPORT

Part I

A. Introduction

1. General.

2. Objectives and terms of reference.

B. Recent advances in knowledge concerning the problem of homosexuality

1. Frequency of homosexual behavior in the general population.

2. Fallacies concerning homosexuality.

3. Understanding of the meaning of homosexual behavior.

4. Treatment and rehabilitation of persons exhibiting homosexual behavior.

5. Deficiencies of knowledge.

6. Summary.

C. Specific Items of Concern.

1. One-time offenders.

2. Voluntary confessions.

3. Type of discharge.

4. Treatment of so called Class III offender.

5. Clinical evaluation.

6. Review procedures.

7. Responsibility to the civilian community.

8. Screening of applicants.

9. Treatment of women.

10. Education and indoctrination

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11. Security implications.

12. Investigative procedures.

13. Deterrents.

14. Statistical analysis.

15. Policies in other government agencies.

16. Attitude and policies toward homosexuals representative of society at large.

17. Post-service adjustment.

D. SECNAV INSTRUCTION 1620.1

1. Differences in policies and procedures between Army, Navy and Air Force.

2. Deficiencies in subject Instruction.

3. Recommended changes.

E. Analyses of Navy Discharge Review Board and Board for Correction of Naval Records Instructions

1. Current instructions.

2. Deficiencies in guidance.

3. Recommended additional guidance.

F. Summary of Recommendations.

Enclosure (1) - Summary of testimony
(2) - Listing of Material considered by the Board
(3) - Preliminary statistical study
(4) - Proposed revision of SECNAVINST 1620.1

Part II - Compilation of source material - Directives, instructions pamphlets, reports and record of verbatim testimony used by the Board during the course of the study.

Part III- Confidential Supplement

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PART I

A. Introduction

1. General

The Board was appointed by Secretary of the Navy precept dated 21 December 1956 (Part II, Appendix 1). The purpose of the Board was stated to be "to prepare and submit to the Secretary of the Navy recommendations for the revision of present Department of the Navy policies, procedures and directives dealing with homosexuals." The Board was directed to determine its own procedures and form of report and to be guided in the extent of the study by the comments in the enclosure to the precept. The Board was further authorized to call witnesses and, subject to the approval of the Secretary of the Navy, to employ civilian consultants. It was directed that the recommendations of the Board be submitted on or before 28 February 1957.

Pursuant to the above instructions the Board initiated a study of the problem, under the following general areas:

a. Background and development of present policies and instructions.

b. Current policies and procedures in force in the Military Departments and other government agencies.

c. Standards and methods used in implementation of the policies.

d. Determination of available knowledge and facts concerning homosexual behavior and treatment.

Accordingly, testimony from representatives of the medical and personnel branches of the Army and Air Force, selected civilian psychiatrists, representatives of the Chief of Naval Personnel, Commandant of the Marine Corps, Chief, Bureau of Medicine and Surgery, Director of Naval Intelligence, and representatives of the Chief of Industrial Relations and Civil Service Commission bearing on the problem was obtained and recorded. All witnesses were most cooperative and helpful. A list of witnesses and brief summary of the testimony is attached as enclosure (1). Copies of the verbatim testimony in each case are contained as appendices to Part II of the report.

Early in its deliberations the Board found that there was little reference or background information as to the deliberations and recommendations of previous boards studying this same subject. Therefore to Part II of this report is appended all the background information, documents, verbatim testimony, and analyses used by the Board during the course of the study. For convenience in handling, all confidential

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material has been segregated and forwarded as Part III to this report. Neither Part II nor Part III are necessary to a proper understanding of this report. However, it is recommended that Part II and Part III be made available as background material to any future Boards convened to consider this subject. (A copy is being retained in the Bureau of Naval Personnel for future reference.)

The Board noted that in the area of sexual perversion, only homosexuality is covered by specific directives, although other categories are equally violative of moral codes, laws and accepted standards of conduct. The Board believes that this special treatment may place an unwarranted emphasis on only one portion of the overall problem. It is therefore recommended that prior to the convening of future boards specifically to review policies and procedures with respect to homosexuals, consideration be given to extending the scope of the directive to cover all aspects of sexual perversion.

During the course of its study, the Board considered the specific items of concern referred to the Board by the Secretary of the Navy (enclosure to the precept) and developed other elements which were determined to have a bearing on the overall responsibilities assigned the Board. A discussion of these items is contained in Section C of this report.

A proposed revision of SECNAV Instruction 1620.1 is submitted as enclosure (4) for consideration of the Secretary. This revision incorporates in so far as practicable the recommendations developed in Sections C and D of this report.

The deficiencies in guidance and instructions to the Navy Discharge Review Board and Board for Correction of Naval Records are discussed in Section E. Proposed guidance to these Boards for consideration by the Secretary of the Navy is included in this section.

The Board has reviewed the majority of the current practices not covered in SECNAV Instruction 1620.1 and has not found any that would warrant change or Secretarial notice. Accordingly no recommendations are submitted on this aspect of the report.

2. Objectives and terms of reference.

The Board took cognizance of the basic objectives as stated by the Secretary of the Navy in the enclosure to the precept, i.e.:

"The Navy's basic objectives in handling homosexual behavior are:

a. To rid the Navy of habitual homosexuals,

b. To provide a deterrent to homosexual activity by naval personnel not habitually homosexual, and

c. To prevent evasion of military service by individuals falsely admitting homosexual acts or tendencies

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in order to maintain the discipline, moral standards and fighting efficiency of the naval service."

To this the Secretary added:

> "Within this framework, the Navy must also be concerned with the preservation of the rights of the individual and his chance for rehabilitation as a useful military man or private citizen."

Cognizance was also taken of the expressed objective of the Department of Defense to implant and develop in members of the Armed Forces adherence to the highest standards of personal conduct.

A nice balance must be attained in changes of policy to ensure that public sensibilities are not offended in any attempt to promote a forward looking program in recognition of the advances in the knowledge of homosexual behavior and treatment, nor can there be any intimation that homosexual conduct is condoned. It is not considered to the best interest of the Military Departments to liberalize standards ahead of the civilian climate; thus in so far as practicable it is recommended that the Navy keep abreast of developments but not attempt to take a position of leadership.

Within these confines, the Board has attempted to reconcile the recommendations set forth in this report - i.e.,

> to promote the highest discipline, moral integrity and standards of conduct within the naval service through a forthright, but just and equitable policy with respect to the individual.

B. Recent Advances in Knowledge Concerning the Problem of Homosexuality

The term "recent advances" should not be interpreted to mean any startling and suddenly discovered new development. Advances in this field have been occasioned by a pulling together of data collected over the years, with reexamination of its meaning in the light of increasing knowledge in related social science fields. In the past ten years, there has been much more professional discussion of the problem of homosexuality, more attention paid to theoretical considerations of its development, and more therapeutic attempts made with different approaches. In addition, the statistical studies of Kinsey have provided revealing knowledge concerning the incidence of homosexual behavior. As a result of all of these factors, knowledge has been advanced in the following four general areas:

1. Frequency of homosexual behavior in the general population.
2. Fallacies concerning homosexuality.
3. Understanding of the meaning of homosexual behavior.
4. Treatment and rehabilitation of persons exhibiting homosexual behavior.

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1. Frequency of homosexual behavior in the general population.

Kinsey's study revealed to the general public a fact long accepted by psychiatrists, namely, that homosexual behavior in both males and females is much more common than has been generally believed. According to Kinsey, approximately 37.5% of nineteen year old American males have had one or more homosexual experiences. However, only about 4% of American males become exclusively homosexual in later life. This latter figure supports the psychiatric concept that homosexual behavior may occur as part of the normal maturing process without having special significance for the future. Although Kinsey's figures have been challenged, no other studies approaching that of Kinsey's in scientific value have been made, and there are other studies which tend to indicate that Kinsey's figures probably are essentially correct. For example, one British author has pointed out that, despite the fact that homosexuality at one time became rampant in certain British schools for boys, the graduates of these schools, almost without exception, later made a normal heterosexual adjustment; and the frequency of exclusively homosexual persons in the British population did not seem to rise measurably.

No accurate figures concerning the frequency of homosexual behavior in the naval service are available. The only statistics compiled to date are based on the number of homosexuals who are actually disclosed. However, there is some indication that the homosexuals disclosed represent only a very small proportion of homosexuals in the Navy, and that homosexual behavior by persons who are not exclusively homosexual is even more common. For example, of 119 exclusively homosexual persons examined by the psychiatrist of a Philadelphia Court, 52 had had active military service during World War II. Of these, only 2 were discharged for homosexuality, 5 were discharged for other reasons, and 45 served out their period of enlistment and were honorably discharged. The vast majority of these individuals served in the Army, and the figures can not be directly applied to the Navy. However, it seems quite likely that there are many more homosexuals serving out their enlistments and receiving honorable discharges than are being caught. Fry reported a detailed survey of 183 men known from prewar studies to be homosexual. Of these, 132 served during World War II. Only 14 were discharged (10 for conditions other than homosexual behavior), 118 serving from 1 to 5 years. Fifty-eight percent were officers. The cases were distributed evenly among Army, Navy, and Air Force. These reports coincide with the experience of psychiatrists who have treated homosexuals giving a history of having served a full enlistment in the military without being detected. No accurate estimate of such cases can be obtained at the present time. This information is urgently needed to give a statistical norm against which to weigh many other items.

2. Fallacies concerning homosexuality.

Many common misconceptions pertaining to homosexuality have become exaggerated and perpetuated over the years. As additional facts

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have been gathered in recent years, the fallacies inherent in these concepts are being demonstrated with increasing frequency. Some concepts still remain which can be seriously questioned, but not, at present, disproved.

It is now generally accepted that even exclusively homosexual persons cannot be identified solely through physical characteristics, overt behavior, patterns of interest, or mannerisms, although some do develop feminine characteristics. It can also be said that homosexuals are neither more or less talented than the general norm of the population. A sampling of exclusively homosexual persons will show roughly the same intelligence quotient, GCT, and educational distribution as does the general population. They may be married, as well as single, and are found in all occupations and professions.

Those who engage in homosexual behavior on occasions, but are not exclusively homosexual, are even less identifiable by any other characteristic of personality than are those who are exclusively homosexual. Since this group may constitute as much as a third of the general male population, it is apparent that they would have to exhibit essentially the same characteristics as the norm of that population. Homosexual behavior cannot be correlated with any other single personality trait, and can be understood in any given instance, only by a complete evaluation of the personality and of the environmental circumstances under which the homosexual behavior occurs. One homosexual act, or even a series of them, does not constitute homosexuality, and is of no value in predicting the future without the complete study mentioned. It cannot be said, as a generalization, that one or more instances of homosexual behavior makes an individual either more likely or less likely to participate in homosexual acts in the future. Each case must have complete individual study to determine the meaning of the homosexual behavior.

One concept which persists without visible supporting data, but which can not be disproved at this time because of the absence of data, is the idea that homosexual individuals and those who have indulged in homosexual behavior cannot acceptably serve in the military. As has been mentioned above, there have been many known instances of individuals who have served honorably and well, despite being exclusively homosexual. An Army witness before this Committee reported on 75 individuals who had reported themselves as having homosexual tendencies and who nonetheless were continued on duty. Of these, 50% gave very poor service and were discharged prior to the completion of their enlistment. These figures seem to indicate that homosexuals cannot effectively serve in the Army, but it must be remembered that this is a highly selected group. These individuals had reported themselves under category III of the Army directive, and had expressed a willingness to take an undesirable discharge to get out of the Army. Obviously, they were having adjustment difficulties which may or may not have had something to do with their homosexuality. From this study it can only be said that a homosexual cannot serve acceptably if his drives are so strong that he turns himself in and requests discharge.

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Another concept which continues without visible support is the concern felt over individuals professing homosexuality to avoid military service. Only rare cases of malingering of this sort have been reported, except in individuals who are under more serious charges. Psychiatrically, it seems more than likely that any individual who would malinger homosexuality to escape service is otherwise unsuited for service, and that careful study of a series of such cases, if they did occur, would indicate that the quality of service given was more of a liability than asset, even if the individual were retained.

A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk. It is difficult to determine just how this idea developed, but it seems that it first appeared in governmental directives in 1950, in the report of the Hoey Committee. This Committee, however, based its recommendation on "the opinions of those best qualified to know, namely, the intelligence agencies of the Government." However, no intelligence agency, as far as can be learned, adduced any factual data before that Committee with which to support these opinions. Isolated cases are mentioned, but to determine that a homosexual is more of a security risk than a non-homosexual, these instances would have to be measured against security breaks by non-homosexuals, and against the proper observance of security by homosexuals. It appears that a classical example from World War I of a homosexual affair between a German officer and Serbian officer which led to a security break is often cited. However, this single instance is not weighed against the activities of the famous Mata Hari of World War I, whose activities could not by any stretch of the imagination be called homosexual. During World War II, ONI investigated homosexuals as security risks, but this was apparently done only because the agency had no other authority to conduct such an investigation. There is considerable information which would indicate that other factors in the personality constitute the security risk rather than the factor of homosexuality alone. One such item, for example, would be feelings of inadequacy which drive a man to boast of the secrets he possesses. Such boasting might very well be done to any sexual partner, whether the partner be homosexual or heterosexual. Some intelligence officers consider a senior officer having illicit heterosexual relations with the wife of a junior officer or enlisted man much more of a security risk than the ordinary homosexual. The matter of indiscretion would appear to be of more importance than the question of the nature of any sexual activity. There is some information to indicate that at least some homosexuals are quite good security risks. As an example, eight enlisted men at one station were disclosed to be engaging in homosexual activities. All had Top Secret clearance and there was no evidence that any of them had broken security. Investigation in this area is urgently needed. Some feel that certain homosexuals might be better security risks than heterosexuals, and homosexuals have been used by some intelligence agencies to illicit information through their homosexual contacts. Obviously, in such a homosexual relationship, one homosexual was a good security risk and

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one a poor security risk. The homosexuality itself had no relationship to the security classification. On the contrary, there is no factual evidence to indicate that homosexuals do not present a serious security problem. In view of the lack of statistical data to prove or disprove this thesis, the Board believes that a factual study of the problem should be conducted.

3. Understanding of the meaning of homosexual behavior.

The concept of homosexuality as a clinical entity has been discarded. Homosexual behavior now is considered symptomatic behavior, the underlying disorders ranging from a personality disorder to a psychosis, either fully developed or incipient. It may also occur as a phase of psychosexual development without any gross disturbance of personality.

The most common psychosis underlying homosexual behavior is schizophrenia. Where the disorder is fully developed, the homosexual behavior is obviously only one of a multitude of symptoms and is recognized as such, even by the layman. However, in the early stages of schizophrenic illness, homosexual activity may be one of the first signs of the disorder and antedate the appearance of further symptoms by months. Some cases of schizophrenia reveal themselves as a diagnosable psychotic process only after years of a schizophrenic adjustment which includes homosexual behavior.

Homosexual behavior may be symptomatic of a psychoneurosis and occurs particularly frequently in obsessive compulsive reactions. In this disorder, which in many instances is closely related to schizophrenic psychopathology, obsessive thoughts about homosexuality and homosexual "tendencies" are even more common than the homosexual behavior itself. By the treatment of the psychoneurosis underlying the homosexual preoccupations, the latter disappear, and these individuals are fully fit for military service. This is a particularly important category, because the obsessive compulsive reaction occurs much more commonly in officers than in enlisted men, and their salvage for service is of considerable importance. It should be mentioned that, at the present time, most of these individuals probably do not get into administrative channels, because they seek psychiatric help for their obsessive ruminations and other symptoms of the psychoneurosis.

Homosexual behavior can occur as a symptom of organic brain disease, whether this be cerebral arteriosclerosis or one of the other degenerative brain diseases. It is now recognized that when homosexual behavior appears for the first time (after adolescence) in an individual over forty, first thought should be given to the presence of organic brain disease as the underlying cause.

Excluding those instances in which homosexual behavior occurs as a manifestation of illness, as outlined above, it is now possible to understand the meaning of homosexual behavior in other individuals.

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This has come about by the recent abandonment, by many psychiatrists and psychoanalysts, of the concept that there are constitutional defects or an inherent personality quality in those who exhibit homosexual behavior. Freud's concept that a certain portion of psychic energy was inherently bound in homosexual feelings has been greatly modified, and in operation almost discarded. Those who have been successful in the handling of homosexual problems have approached these problems from an interpersonal and adaptational point of view. Each of these theoretical constructs can be translated in the terms of the other, but for brevity only the adaptational theory of human behavior will be utilized here.

Basically, all behavior can be looked upon as the resultant of two forces, (1) the needs of the individual, and (2) the demands of society. Thus, an individual's behavior constitutes the means by which he adapts to his social environment, seeks to insure his survival, and gratifies his needs. To this struggle, the individual brings his assets, such as intelligence and training, and his liabilities, such as various emotional problems created during his early life development. Because of the customs and mores of our society, sexual behavior is perhaps the most delicately balanced area of adjustment and, hence, the one most likely to be disturbed in the adaptational process and by disturbances in interpersonal relations. Thus, as in any other behavioral disturbance, homosexual behavior can be seen to contain, not only the elements of sexual gratification, but also completely non-sexual elaborations which arise from unconscious problems in dependency, aggression, and competition. In these instances the proper focus of attention in treatment is on the underlying problem which has become incorporated in the sexual act. Through psychotherapy, resolution of the underlying problem causes the disappearance of the homosexual behavior. It must be pointed out that the basic emotional conflicts are out of the individual's awareness, and only the homosexual urges are felt by him.

Any behavior, to be understandable to the observer, must be defined in terms of motivational goals. Nowhere is this more true than in homosexual behavior. When the homosexual behavior has, as its motivational goal, orgastic satisfaction, the sexual component is primary, and it may be spoken of as "pure" homosexual behavior. This type of behavior may be seen in individuals, usually heterosexual, who are isolated from a heterosexual outlet for a long period of time, and whose sexual drives are high. This type of behavior occurs among prisoners confined over long periods of time, and was much more common at isolated stations during World War II than most people realize. It is important to note that there is little likelihood of such homosexual behavior recurring when heterosexual outlets are available. It is also important to note that this type of behavior can be diminished if other more socially acceptable outlets for psychic energy are provided, such as athletic activities and similar active pursuits.

Since the majority of cases in the Navy occur in civilian settings where a heterosexual outlet probably is available, many of these acts obviously have other motivational goals than orgastic

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satisfaction. In these, the sexual component is of secondary importance and the primary component arises out of the individual's efforts to adapt to the social structure and, at the same time, obtain gratification for his basic needs. Commonly involved are the very deep seated dependency needs which arise from early childhood. At a more superficial level are the needs for friendship and affection from other persons. At the most superficial level may be a very simple economic need, as was demonstrated in the days when the pay of enlisted men was quite low. On some occasions, men were known to participate passively in a homosexual act for money with which to purchase heterosexual relations. The basic forces underlying a homosexual act, therefore, can run the gamut of emotional problems, and the exact meaning of homosexual behavior must be determined by careful psychiatric evaluation in each instance if the case is to be properly handled.

The importance of basic conflicts over dependency cannot be overemphasized. Such conflicts are extremely common in the American population today. Dependency conflicts reach their peak of disturbance to adaptation in the late adolescent period. Since a large portion of the Navy falls in this age group, it is to be expected that much behavior of an antisocial type will occur in this age group as an acting out of the unconscious dependency problems. This acting out may produce disciplinary offenses, excessive alcoholism, or homosexual behavior. What factor determines the choice of symptom is not known at this time.

Aside from the adaptational struggle with dependency conflicts, the factor which is probably of greatest significance in homosexual behavior in the younger age group is immaturity. Immaturity, combined with adolescent experimentation, undoubtedly accounts for many cases in the group below age twenty. Just as the curiosity of youth may lead a youngster to become grossly inebriated in order to "see what it is like", he may also succumb to a homosexual advance. Homosexual behavior in these cases constitutes a phase of psychological development, rather than confirmed sexual deviancy. Such individuals may actually participate in several rather than a single homosexual act. However, the fact which distinguishes them from confirmed homosexuals is the psychological meaning of the activity. Experience has shown that when the homosexual behavior is not the primary source of sexual satisfaction, or symptomatic of a significant emotional disturbance, the individual normally will pass on to a heterosexual level of adjustment.

From the above, it may be seen that a combination of factors within and without the personality are necessary for the development of exclusively homosexual behavior. It would appear that fears concerning the future sexual adjustment of young men who have engaged in one or a series of homosexual acts may not be well grounded.

4. Treatment and rehabilitation of persons exhibiting homosexual behavior.

Increased understanding of the dynamics of homosexual behavior, as outlined above, has improved treatment and rehabilitation technics.

Even the exclusively homosexual individual can now be treated and helped if he is well motivated for change. For the individual who is not exclusively homosexual, treatment of the homosexual behavior is as simple or as difficult as treatment of the underlying disorder. When homosexual behavior is a symptom of schizophrenia, treatment is difficult and the patient ordinarily is not suited for further military service. When the homosexual behavior is a manifestation of immaturity, treatment usually is quite simple and the individual in most instances can continue to do military duty. Between these two extremes lie all gradations of therapeutic difficulties. The obsessive compulsive reactions are difficult of treatment, but since they occur usually in people of good intelligence, successful results of treatment may be quite gratifying.

5. Deficiencies of Knowledge.

As additional information has accumulated about homosexual behavior, deficiencies in our knowledge have become spotlighted. Some of these have been mentioned in the discussion above.

At this time little is known about the physiological and physical conditions which may contribute to the development of homosexual behavior. Since this behavior can occur as a manifestation of a wide range of emotional disturbances, it would seem that the range of physiological and physical conditions may be equally as wide, hence, extremely difficult to identify.

The great unknown in psychiatry revolves around the choice of symptomatology. Since we know that essentially the same psychopathology can produce quite different behavior phenomena, the question must be raised as to how the given symptom is chosen. As long as the mechanism by which basic emotional problems produce homosexual behavior (rather than some other symptom) are not known, it is difficult if not impossible to take adequate preventive steps. It might be thought that ridding the Navy of exclusively homosexual personnel would answer this problem and to some extent, this may be true. However, it is to be noted that the majority of the offenses occur in civilian settings and many of these occur with civilian partners.

It has been suggested that adequate educational procedures would reduce homosexual behavior. While this suggestion appears logical on the surface, there is no data which specifically support it. To the contrary, in past experience with venereal disease, neither education nor disciplinary measures had any demonstrable effect on the venereal disease rate in the Navy.

The greatest deficiency in our present day knowledge is in the area of homosexuality in women. Very few women come for psychiatric treatment of homosexual problems, so that psychiatrists have gained little insight into female homosexual behavior. To date, it has been impossible to arrive at a satisfactory overall definition of a homosexual

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act in women. For statistical purposes, Kinsey defines a homosexual act as one in which orgasm occurs. However, many women never experience orgasm in either heterosexual or homosexual relations, and yet perform definite sexual acts.

It is possible for two women to be in a homosexual relationship with one or both of them not being aware of the relationship until it is disrupted. This fact arises out of the common misconception that only genital activity represents sexual impulses. Actually, in a continuing homosexual relationship, as in a heterosexual relationship, genital activity occupies only a minute portion of the relationship. The major portion of any such relationship is the interchange of emotions and feelings. The situation becomes somewhat clarified if the word sexual is dropped and the word homoeroticism used. All individuals have some love and regard for members of the same sex. This homoeroticism is the basis of fraternal organizations, women's clubs and similar activities. It in no way implies genital activity. The social structure permits a wider expression of homoeroticism between women than between men, and it is possible that this in itself lowers the incidence of genital homosexuality among women.

It is a phenomenon of our culture that from the time of birth a woman turns to another woman for comfort in times of loneliness or unhappiness. A frightened little girl naturally climbs in bed with her mother. If, at age 18, she again becomes lonely or frightened, what procedure is more natural than to seek the physical closeness of another woman? The line between this seeking for closeness and actual homosexuality is thin and vaguely drawn.

6. Summary.

With increased psychiatric interest in the problem of homosexuality, and with contributions from the social sciences, especially anthropology, additions to our information concerning homosexual behavior, over the past several years, can be outlined as follows:

a. Homosexual behavior is much more frequent than has been generally believed.

b. Many exclusively homosexual persons have served honorably in all branches of the military service without detection.

c. Homosexual behavior cannot be correlated with any other characteristic or group of characteristics of the personality (intelligence, GCT, etc.).

d. It cannot be said with any certainty, as a generalization, that one or more instances of homosexual behavior make an individual either more likely or less likely to participate in homosexual acts in the future.

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e. Homosexual behavior, in any given instance, can be understood only by a complete evaluation of the personality and of the environmental circumstances under which the behavior occurs.

f. The extent to which otherwise suitable personnel will malinger homosexuality to avoid military service, except in instances where more severe charges are pending, is questionable.

g. From all information available to the Committee, it would appear that the concept that homosexuals necessarily pose a security risk is unsupported by adequate factual data.

h. It seems probable that other factors in the personality influence the security risk as much as the homosexual behavior.

i. The concept of homosexuality as a clinical entity has been discarded.

j. Homosexual behavior is symptomatic behavior, which may occur as a phase of psychosexual maturing, or as a symptom of any one of a number of disorders, ranging from personality defects to major psychoses and organic brain disease.

k. Since homosexual behavior is symptomatic, for medical purposes the only workable classification by which it can be categorized is a classification of the underlying disturbance.

l. As a corrollary of the above, each class of the present directive contains all types of unrelated homosexual behavior.

m. Homosexual behavior may be better understood if considered a manifestation of the individual's attempt to adapt to social pressures.

n. Homosexual behavior more often than not has other motivational goals than orgastic satisfaction, and the basic forces underlying it run the gamut of emotional problems.

o. The same type of emotional problem which results in homosexual behavior in one individual could result in other individuals in other types of disciplinary offenses, more serious emotional illness, or psychosomatic manifestations.

p. In the younger age group, immaturity combined with adolescent experimentation is a highly significant factor in the development of homosexual behavior.

q. In the immature, if homosexual behavior is not the primary source of satisfaction, or symptomatic of an emotional disturbance, the individual normally will pass on to a heterosexual level of adjustment.

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r. A combination of factors within and without the personality are necessary for the development of exclusively homosexual behavior.

s. Treatment of homosexual behavior is as simple or as difficult as treatment of the underlying disorder, which is the proper focus of therapeutic intervention.

t. Deficiencies in our knowledge exist in the entire field of homosexuality, particularly with reference to the areas of possible preventive action and homosexuality in women.

C. Specific Items of Concern.

The following comprises the analyses and recommendations of the Board with respect to the specific items of concern referred to the Board in the enclosure to the precept and certain other additional points of particular importance in connection with the revision of current policies and procedures:

1. One-Time Offenders

Should court-martial or administrative discharge be mandatory in all cases, or would reassignment and retention under some form of probation better serve the Navy and the individual in certain cases?

Discussion:

The problem of the so-called "one-time offender" is the most difficult one with which the Board has had to struggle. This category ranges all the way from the forcible sodomist under Class I, for whom general court-martial is now mandatory, to the pre-service seduction of the immature - and perhaps ignorant - adolescent. Perhaps the largest number of one-time offenders occurs in the in-between area - the in-service participant, who either through ignorance, curiosity or desire to experiment, or the influence of alcohol or corrupt associations, submits to, or participates in, a homosexual act. Further complications arise from the fact that this group is not necessarily restricted to the literal "one-timer", although the accuracy of this label diminishes rapidly with the number of incidents beyond one. Finally, in this broad category are some one-timers who are, in fact, true, confirmed, habitual homosexuals, to whom, despite the occurrence to date of only one in-service act, or no in-service act, homosexuality is a way of life.

With the Class I category of forcible offender, the Board has no difficulty. Such an offense is a serious breach of the criminal code, and general court-martial trial is normally indicated. In some rare instances, however, trial by general court-martial - as opposed to special court-martial - may not be in the best interest of the naval service, and reliance should be placed on the discretion of command as to the type of court-martial which, under all the circumstances of the

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individual case, is most appropriate. The Board realizes that some cases are not susceptible to court-martial, especially where children are involved and parents are unwilling to have them appear as witnesses. However, this offense is of such gravity that an affirmation of serious consequences is desirable.

In coming to grips with the problem of the non-forcible one-time offenders, the Board feels that categorization of these offenders into Classes II and III of the present directive is unrealistic, artificial and unhelpful. A far more useful approach in understanding the problem of the non-forcible, one-time offender is found in the classification of individuals in this group as either (a) habitual, confirmed, true homosexuals, to whom homosexuality is a way of life, and (b) all other offenders, that is, those who have committed a homosexual act or acts, but for whom the act is not habitual or symptomatic of a way of life. While this classification is oversimplified, and ignores some of the psychiatric niceties which may have to be dealt with in specific cases, it offers a practical, helpful starting point in the working out of a solution.

Adoption of the above grouping would facilitate disposition of individual cases. Psychiatric opinion is substantially unanimous to the effect that the confirmed "way of life" homosexual would require, at best, extended treatment for any possibility of cure, and the opinion of both line officer and psychiatrist is to the effect that such an individual is a liability to the naval service, and must be separated in all cases.

The Board recognizes the difficulties inherent in arriving at a diagnosis of confirmed "way of life" homosexuality in the individual case. This is primarily a psychiatric problem, and is dealt with as such elsewhere in this report. This diagnosis, however, is neither insuperable, nor as difficult as the current SECNAV Instruction makes it out to be. It can be accomplished by a thorough psychiatric evaluation, and this the Board recommends in all cases. Current procedures for a "psychiatric or medical evaluation" are inadequate in two respects: The patent inadequacy of a "medical evaluation" as opposed to evaluation by a full-fledged psychiatrist, and a failure to require of the examiner in all cases, a detailed, specific, standardized work-up. The Board has included a sample format for such an examination in its recommendations.

With regard to the non-confirmed offender who commits one or more homosexual acts, the Board has heard and taken into account, a great mass of testimony. The vast majority of this has been to the effect, in brief, that present procedures are too inflexible. Proceeding from this general assumption, the Board turned to current directives of the Army and Air Force on this phase of the subject.

The Army directive of January 1955 (currently being revised) provides that one-time offenders, whom psychiatry finds are not confirmed homosexuals, or who do not possess strong tendencies, shall normally be retained. In amplification of this policy, an Army witness

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stated, "Individuals who cannot be regarded as true and confirmed homosexuals, but who have been involved in a single act as a result of immaturity, curiosity, or intoxication...../whether minors or adults/ ....when the psychiatric evaluation concludes that they are not confirmed homosexuals and do not possess strong homosexual tendencies, are normally retained in the service."

The Air Force directive of July 1956 provides that exceptions to the policy of separation "......to permit retention in the Service are proper only when the offense was committed, proposed, or attempted under the most unusual extenuating circumstances, when it is determined that the member does not have homosexual tendencies, and when the member's ability to perform military service has not been compromised. Intoxication is not an extenuating circumstance." An Air Force witness amplified: "Cases involving immaturity and professed intoxication require careful study and evaluation. Evidence of one or two teen-age acts may imply only youthful curiosity or can be a positive identification of homosexual tendencies. When only youthful curiosity is involved, with no indication of an established pattern of homosexuality, closing the case without further action is proper unless the individual's ability to perform service has been compromised to the extent that separation for the convenience of the government is indicated. Intoxication has grown to be one of the most common excuses presented by personnel confronted with evidence of homosexual acts or tendencies. To accept such explanations cannot alter the fact that such actions have undoubtedly compromised the member's ability to continue to perform military service. More than one such incident not only confirms the above but permits positive classification....." (This witness further stated that retentions under this provision have been rare.)

Based on testimony of record, the practice of the other services, and its own experience, the Board has little difficulty in reaching the conclusion that mandatory discharge for all one-time, non-habitual offenders is not in the best interest of the naval service. Furthermore, it militates against the basic principle, to which the Board subscribes most emphatically, that each such case must receive individual consideration. The difficulty then is not whether ameliorating circumstances should be taken into account, but what circumstances? The Board agrees that the circumstances of immaturity, of ignorance, and occasionally of intoxication, and whether notoriety or other factors have destroyed the offender's usefulness, are all worthy of consideration. None of these elements, however, necessarily requires a determination in favor of the offender, and each element must be considered in the light of the overall web of circumstances going to make up each individual case.

Overall evaluation by a board of officers continues to be the most important procedural step in reaching a decision as to disposition of the one-time, non-habitual offender. The board of officers should be permitted to take into account the foregoing elements as a part of the whole picture surrounding each offense, in reaching its opinion and recommendation as to disposition. This Board believes that the

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aforementioned mandatory psychiatric evaluation, arrived at prior to action by a board of officers, will be of invaluable assistance to the board in its deliberations.

As a final and most important element in assisting the board of officers in reaching a sound conclusion in each case, this Board feels that the opinions and recommendations of the particular commanding officer are of great significance, and it accordingly specifically urges adoption of language designed to encourage the commanding officer to express full and deliberate opinions and recommendations in each case, and of language directing the board to give due consideration to same.

This Board recognizes that considerations of public policy, morals, individual equity and the needs of the naval service all must be considered in drafting any instruction requiring boards of officers to consider the aforementioned circumstances. The vehicle by which this is to be accomplished is given more detailed consideration elsewhere in this report.

Individuals retained should have no probationary strings attached other than such as may be inherent in the knowledge that their previous offense is a matter of departmental record.

Assuming adoption of the foregoing procedures, many one-time offenders will continue to be separated from the service. It then becomes necessary next to consider the type of discharge that such a discharged individual should receive. Again the current directive appears to be too inflexible. The extent to which this inflexibility should be liberalized, is discussed under Item 3 below. To round out the discussion of the treatment of one-time offenders, however, the Board feels in summary that the undesirable discharge should not be mandatory, that overall evaluation by boards of officers as outlined above is of paramount importance, and that honorable type separations are warranted in certain situations.

Summary:

To summarize the opinions of the Board with respect to the "one-time offenders":

a. Present procedures for Class I are generally satisfactory.

b. Present classification of offenders in Classes II and III is unsatisfactory.

c. One-time offenders can be more helpfully grouped as (1) confirmed homosexuals and as (2) all others.

d. More reliance should be placed on psychiatric evaluation and commanding officer's evaluation of offenders.

e. Confirmed homosexuals must be separated in all cases.

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f. Those who are not confirmed homosexuals may be retained in specific cases as certain limited ameliorative circumstances warrant.

g. Type of discharge should depend on an overall evaluation by a board of officers.

Recommendations:

The following recommendations are made with respect to one-time offenders:

a. A psychiatric evaluation should be mandatory in all active duty cases.

b. A commanding officer's evaluation should be mandatory in all active duty cases.

c. Class I offenders should continue normally to be tried by general court-martial.

d. Non-Class I offenders should be grouped generally as to whether they are, or are not, true, confirmed "way of life" homosexuals.

(1) Confirmed homosexuals should be separated in all cases.

(2) Disposition of others to be based on overall evaluations by boards of officers.

e. The type of discharge should not be inflexibly prescribed but should be based on findings and opinions of boards of officers.

2. Voluntary confessions.

Do our present methods of handling the man who, without fear of subsequent disclosure, admits participation in a homosexual act, help or hinder the stamping out of homosexuality in the Navy?

Discussion:

This question is deemed by the Board to be somewhat ambiguous and misleading. The individual who voluntarily admits participation during the course of an official interview or interrogation to which he is a party, or the individual, who it is subsequently determined might have reason to believe he had been seen in the course of his activity, have been eliminated from consideration under this item. There is, however, record of cases in which individuals have reported homosexual acts, including purported homosexual assault on their person or seduction, to:

a. The Commanding Officer,

b. The Chaplain,

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c. The Medical Officer,

which would never have been otherwise uncovered and which have resulted in undesirable or unsuitable discharges for the individual so reporting.

Pertinent to the problem is the fact that while under the Code of Military Justice (Paragraph 151, Manual for Courtmartial, U. S. 1951) chaplains have the right of privileged communications (where the communications are made as formal acts of religion or concerning a matter of conscience), such rights have not been extended to medical officers in the military services. Similarly the Board has information that seventeen (17) states of the Union do not recognize any privileged communication between a physician and his patient.

Lacking this right, medical officers have at times had to forgo any effort to treat or counsel individuals who have requested help, or have adopted subterfuges. The directive under question has been interpreted to require "all persons" to report to their commanding officer any information coming to their attention concerning homosexuality of any member of the service. Moreover under the strict letter of Article 31 of the Uniform Code of Military Justice, physicians are required to warn personnel of the fact that any statement they make can be used against them when assistance in homosexual problems is requested by patients. If followed literally, this would effectively end the usefulness of the psychiatrist in the case and recitation of the facts would probably cease at that point. It would be frustrating to the patient and may be detrimental to the service.

Medical officers in the Armed Forces have at times concealed homosexual tendencies or behavior under the guise of various psychiatric diagnoses in order to (a) treat the individual concerned or (b) to effect discharge without the stigma of homosexuality attached thereto.

It is the practice among many chaplains to advise individuals seeking assistance concerning homosexual problems to see the medical officer and/or to make a clean breast of the matter to the commanding officer. Such referral, of course, literally puts the physician "on the spot" with no alternative but to officially report the confidence.

Facts are not available to prove or disprove that the liability of an undesirable discharge does in fact discourage any voluntary confession or recourse to psychiatric assistance. The few cases on record would, however, seem to uphold the validity of this assertion.

It is the consensus of the Board that much can be done to encourage voluntary confessions without unduly jeopardizing the best interests of those within a particular class who confess to a homosexual act or to possessing homosexual tendencies. It is considered desirable to formulate a policy to encourage confessions that lead to the separation from the service of confirmed or habitual homosexuals with discharges under other than honorable conditions but that will

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at the same time distinguish the individual who has transgressed in a moment of weakness from the true pervert.

It is recommended that a policy be adopted whereby an individual, who, due to immaturity, ignorance, or occasionally intoxication, becomes a party to an isolated act and thereafter suffers regret, remorse, and repugnance, will be encouraged to confess such to his commanding officer, chaplain, or medical officer for the purpose of minimizing adverse consequences. The policy should provide that he who does confess this non-repetitive, isolated act, who makes a complete detailed statement may be retained in the naval service. The policy should further encourage confessions to homosexual tendencies.

An appropriate procedure would be as follows:

a. One admitting to an in-service act should be subjected to a thorough psychiatric evaluation to determine in so far as possible that he has in fact committed only this non-repetitive, isolated episode in the service and that in the estimation or opinion of the psychiatrist does not in fact possess homosexual tendencies. Individuals who meet the above criteria may be retained if their service record otherwise warrants. One who has committed such an isolated act, confessed, but who is diagnosed by the psychiatrist as possessing true homosexual tendencies, should be separated with the type discharge otherwise warranted by his service record.

b. He who confesses to possessing homosexual tendencies should be interviewed by a psychiatrist, or, pending the availability of a psychiatrist, by a medical officer, who should make a determination in so far as practicable whether the individual in fact does possess these tendencies to such a degree that his retention in the service is not warranted. This determination should be subject to the commanding officer's opinion and comment as to whether the individual is confessing to tendencies for the purpose of evading further military service or not. Separation will not be effected until a complete psychiatric evaluation has confirmed the existence of homosexual tendencies. One who is determined to have homosexual tendencies under these circumstances will normally be separated with a type of discharge of no lower character than unsuitable. However, one who is determined to have been a confirmed homosexual at the time he entered the service, having knowingly failed to disclose the fact upon such entry, may be discharged with an undesirable discharge.

c. These policy provisions should not apply to persons who are found to be Class I.

The Board noted with great concern that the medical officers of the Armed Services were circumscribed and handicapped in establishing proper physician-patient relationship in the treatment of cases which directly or indirectly involve homosexuality. This inhibition was imposed by specific directive or inferred by the doctors themselves from combinations of regulations of a general nature.

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Air Force Regulation 35-66, Section A-6 provides:

> "It is the duty of every member to report to his commander any facts concerning overt acts of homosexuality by any member which may come to his attention for (sic) any homosexual acts or tendency. Any member who makes a false official statement for the purposes of initiating action to obtain a discharge under this regulation is subject to action under the appropriate Articles of the UCMJ."

Although not specifically set forth in SECNAV Instruction 1620.1, the substance of the above Air Force Regulation has been in fact inferred by Navy medical officers from a reading of paragraph 4 of that Instruction together with the provisions of Article 1216, U. S. Navy Regulations 1948.

The above referred to self-imposed restriction by Navy medical officers has resulted in a not-injurious practice of failure to report every instance of homosexual activity, knowledge of which was acquired through the physician-patient relationship.

The Board has considered numerous proposed procedures which would authorize the medical officer in specific types of cases to exercise his discretion with regard to placing information of a homosexual nature in official channels for routine processing. However, the Board has discarded as impracticable and fraught with insurmountable administrative difficulties all such procedures.

It is the considered opinion of the Board that the professional and military integrity of the medical officers must be relied upon to the fullest extent for the proper administration of any directives covering homosexuality, and that the practice heretofore considered by the Navy medical officers as not conforming to directives be tacitly recognized as permissible. Thus the medical officer will be in a position to continue exercising his professional discretion in determining whether information, obtained in the course of the physician-patient relationship, pertaining to acts or tendencies of a homosexual nature, are of such import as to necessitate his officially bringing them to the attention of the commanding officer of the patient involved.

Summary

a. Current policies do not provide any concessions for voluntary confessions.

b. Privileged communications are recognized for chaplains but not for medical officers.

c. Current policies tend to discourage voluntary confessions.

d. Medical officers are currently exercising discretion and judgment without the explicit sanction of written directives.

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Recommendations:

a. To encourage voluntary confessions, a person voluntarily confessing a non-repetitive, isolated act under ameliorative circumstances should be:

(1) Considered for retention if psychiatric evaluation does not indicate homosexual tendencies.

(2) Separated if homosexual tendencies are present, but with the type of discharge warranted by his service record.

b. The above policy not to apply to Class I persons.

c. To encourage personnel to confess to homosexual tendencies, provide that if confirmed by psychiatric evaluation, and there is no evidence to indicate an attempt to evade military service, they will normally be separated with a type of discharge of no lower character than unsuitable. However, one who is determined to have been a confirmed homosexual at the time he entered the service, having knowingly failed to disclose such fact may be discharged with an undesirable discharge.

d. That no explicit statement or implication be made in published directives whether or not any obligation exists on the part of medical officers to make an official report concerning homosexual matters disclosed to them in confidence by a patient under treatment. Thus the present practice, whereby it is left to the sound professional judgment of the medical officer, is tacitly recognized and accepted.

3. Type of Discharge.

Do our rules on type of administrative discharge have a deterrent effect? To what extent do they inhibit eventual rehabilitation? Can they be liberalized in appropriate cases without disrupting discipline?

The preponderance of testimony before this Board has been to the effect that the type of discharge (most frequently the undesirable) currently given the homosexual offender, is little or no deterrent to commission of the offense. The majority of witnesses (and the Board) agree, however, that there is no reliable means by which the deterrent effect, if any, of the type of discharge, can be accurately estimated. There seems to be little reason to challenge the impression of "no-deterrent effect" with respect to the habitual, confirmed, "way of life" homosexual. As to all others, however, a conclusion of no-deterrent effect may be on weaker grounds.

Whether or not the other than honorable discharge is a deterrent may be less important, however, than other considerations which argue for its continued use. For example, a homosexual act is a sodomitcal

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act and may be punished under the Uniform Code of Military Justice by dishonorable discharge and confinement up to five years. Many states provide comparable penalties. This punishment is analogous to that authorized for other serious crimes under the Uniform Code of Military Justice; such as, desertion, grand larceny (over $50), forgery, housebreaking, perjury, and drug and postal offenses. Presumably over the years legislative opinion has been to the effect that severe punishment is necessary, if not entirely as a deterrent, then for some other good reasons, well founded in public policy, such as protection and preservation of morals. In this setting, the other than honorable discharge currently offered the non-forcible offender, does not appear to be excessive. Recognizing that at times criminal codes lag behind the sociological and cultural advancement of society in general, the Board has nevertheless been unable to ignore the fact that a homosexual act is a serious military and criminal offense, affirmed as such by an Act of Congress as recently as 1950. (Uniform Code of Military Justice.)

On the other hand, the ineffectiveness as a deterrent of the policy of court-martial and confinement for all homosexual offenders has already been illustrated. During the late 1930's and early 1940's this policy resulted in filling our places of confinement with long-term offenders. A more "enlightened" policy of substituting an other than honorable discharge for court-martial and confinement was adopted for the majority of non-forcible cases. No statistics exist from which it can be determined whether or not this "enlightment" resulted in an increased incidence of the offense. It is open to conjecture whether further "enlightenment" by complete elimination of the other than honorable discharge (undesirable) would result in an increase in the incidence of homosexual activity.

The Board found itself on firmer ground in reaching its conclusion that the type discharge awarded - again referring primarily to the Undesirable - was an inhibitor of social and economic rehabilitation in many cases. Again, thoroughgoing statistics are absent, but the impression is substantial that such a discharge limits the employment opportunities available to its holder, deprives him of certain benefits, generally interferes with his economic and social readjustment, and may actually aggravate the homosexual factors involved. Of course many of these offenders could have been court-martialed, in which case they probably would have received punitive discharges interfering at least as much as, and perhaps more, with rehabilitation than an administrative discharge under other than honorable conditions. It is to be noted that by recent Department of Defense Directive implemented by BUPERS Instruction 1900.2A, a code number designating the reason for discharge is now inserted on DD Form 214 (Report of Tranfer or Discharge) as information to intergovernment agencies.

While rehabilitation per se is not primarily a problem of the military, the Board recognized the obligation of the military departments

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to the country not to award a type of discharge more onerous than the paramount needs of the service require. The question then resolves itself into one of what types of administrative discharges are required by the needs of the service. Assuming the previous point as to which there may be some doubt, that is, that an other than honorable discharge is little or no deterrent to homosexual activity, the naval service must nevertheless preserve and protect moral standards and it cannot afford to condone standards of conduct which fall below moral standards of society in general. Merely to separate an offender in many cases may not be enough - an additional label may be necessary to indicate disapproval, and the type label should be indicative both of the degree of disapproval and the degree of misconduct. Thus there are rarely if ever grounds for discharging an in-service offender with an honorable discharge, and little need or excuse for discharging with an other than honorable discharge one whose sole transgression was a pre-service act of adolescence! Within these extreme limits various types of cases demand various treatments. In justice to both the service and the individual, inflexible rules should be avoided, and each case adjudged on its own merits.

Within the framework of these general comments, certain more specific points of agreement have been reached. The in-service offender, for example, whether he be confirmed or a "one-timer", has committed a serious breach of discipline (as distinguished from a breach of moral behavior), and discipline is a military concern of the first importance. Even when the offense is committed in a civilian environment, the military offender has become a potential disciplinary problem. Certainly he has become a weak link in the chain. He may be subjected to undue pressure to keep his offense a secret; he may offend again, more readily the second time; his behavior may become known, in which case he will be a target for abuse by some of his fellows, and for exploitation by others; he may become a liability to good morale and discipline in a variety of ways. While mere separation may be adequate to meet the requirements of good morale and discipline in one case, in others an unequivocal label of disapproval may be necessary. Hence the Board is of the opinion that the service must retain the power, in appropriate cases, to award a discharge under other than honorable conditions for the in-service offender.

Pre-service offenders present less of a hazard to discipline and morale, in most cases, than those who have offended while in uniform. Exception must be made for the confirmed, "way of life" homosexual. In each case, however, the needs of the service can adequately be met by a simple discharge, the specific type to be determined by consideration of all circumstances, including the offender's total record of service. Ordinarily, this will call for a general discharge (under honorable conditions), since only in the rarest of cases will the offender have a record sufficiently meritorious to warrant an honorable discharge under current regulations applicable to those two categories.

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Personnel who merely admit, profess or exhibit homosexual tendencies present a unique problem. When psychiatric evaluation confirms the tendency, separation with a type of discharge warranted by the individual's service record is appropriate both for the service and the individual. The unique situation arises from the fact that military service in this country is a statutory obligation - an obligation which not all servicemen enter into with equal enthusiasm. To those in whom the enthusiasm is lacking, the present power of the services to award a discharge under other than honorable conditions may be a deterrent to false confession of a homosexual act or homosexual tendencies to avoid service or to obtain a separation. The extent to which this power is a deterrent to false admissions is not readily ascertainable; however, depriving the service of this discharge power would be an open invitation to this type of malingerer, without at the same time serving any useful purpose, since the bona fide tendency case will be screened by the psychiatrist and issued an honorable type discharge anyway.

Summary:

a. The other than honorable discharge should not be mandatory for any class of offender.

b. Boards of officers, in reaching a conclusion as to type of discharge to be awarded should take into consideration the service person's overall service record, as well as all the circumstances in the individual's case.

c. The naval service must retain the power to award an other than honorable discharge in appropriate cases, no matter what the category, as a (1) deterrent, albeit an unmeasured one; (2) preserver and protector of moral standards; and (3) sound and necessary tool of administrative flexibility.

d. The needs of the service are such that ordinarily discharge under other than honorable conditions need be awarded only when the offender has committed an in-service act or acts.

Recommendations:

a. That no particular type of administrative discharge be made mandatory for any particular type of homosexual or homosexual behavior.

b. That the type of discharge should be based on the findings and opinions of a board of officers arrived at after consideration of the service person's overall record, as well as the circumstances of the individual case.

4. Treatment of so-called Class III Offender

Are our current procedures sound in light of present-day knowledge?

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Discussion:

Present directives define Class III as "those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist."

The majority of all witnesses were in agreement that this classification was a constant source of difficulty, unworkable from the viewpoint of the psychiatrists and too inflexible in administration at the command level.

The following specific defects were brought to the attention of the board:

a. "exhibit.....homosexual tendencies"...

It is generally accepted that even exclusively homosexual persons can not be identified solely through physical characteristics, overt behavior, patterns of interest or mannerisms. On the other hand, some fully heterosexual persons exhibit mannerisms which could mislead the layman.

b. "profess or admit homosexual tendencies"

It is difficult for even a trained and experienced psychiatrist to arrive at an accurate determination as to whether an individual is a homosexual solely on the statements of the patient.

c. To exhibit, profess or admit homosexual tendencies is not an offense, any more than tendencies toward alcoholism for example, and where such tendencies are controlled during naval service, the individual should not be placed in a position of being separated with an undesirable discharge because of such tendencies.

d. The number of cases where personnel professed such tendencies for the purpose of obtaining a discharge from military service, though not ascertainable with any degree of accuracy, is considered to be negligible. The most frequent instances occur among those individuals already serving sentences for other offenses.

e. The mandatory implications in the procedures for Class III offender tend to limit severely the commanding officer from exercising personal judgment in the disposition of these cases.

f. There are few pure "tendency" cases of record.

g. Until recently the Class III offender has in many cases received an undesirable discharge, considered by most witnesses before the board as a punishment unduly harsh and disproportionate.

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h. The administration of the procedures pertaining to Class III offender has directed the psychiatrists toward chronic prevarication in the preparation of medical reports upon those individuals seeking guidance for imagined or actual homosexual tendencies.

Summary

The Board is of the opinion that the policy for the disposition of the so-called Class III offender, as presently prescribed and interpreted, has resulted in cases of injustice by the awarding of undesirable discharges, a failure to receive the support of medical officers in the form of adequate clinical evaluations, the loss to the service of individuals that could have contributed valuable service, and the denial to the commander of that flexibility of administrative determination in cases of this type which he, with the full technical assistance of the psychiatrist, should be fully competent to exercise to the betterment of the service and the individual.

Recommendations:

a. That Class III as now defined be abolished.

b. That individuals formerly included in Class III be processed as in recommendation d under Item 1 above.

5. Clinical Evaluations

Discussion:

The present SECNAV Instruction pertaining to disposition of homosexuals provides for the medical examination of each member being considered under the purview of the directive. It is made quite clear in the Instruction that the primary purpose of the examination is to determine whether the member is psychotic. However, provision is also made for the examining medical officer, at the request of the command, to aid in determination of whether the member, in fact, has homosexual tendencies or has participated in homosexual activity. Beyond this, the present directive quite explicitly excludes consideration of the medical aspects of homosexuality either on a local or the dispositional level. In fact, it is not even necessary for the clinical evaluation to be conducted by a medical officer trained in psychiatry. Such a frame of reference cannot avoid discouraging a thorough psychiatric study of the individual, beyond a determination of whether he is psychotic.

In order to evaluate the adequacy, from a psychiatric standpoint, of reports being submitted under the current directive, a careful analysis has been made of a sample of 37 recent psychiatric evaluations utilized by the Bureau of Naval Personnel in processing cases of homosexuality. Each report has been rated as to its adequacy from an administrative standpoint. Over two-thirds of the examinations were

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conducted by trained psychiatrists; and from an administrative standpoint, 21 of the 37 reports were considered excellent or outstanding. However, it immediately becomes quite evident that there is a vast difference between the administrative and the medical concepts of adequacy in such consultations. For example, one evaluation, which was rated outstanding for dispositional purposes, is both unsatisfactory and meaningless as a psychiatric consultation. Only one report approaches adequacy in providing an understanding of the psychiatric aspects of the individual's behavior. At best, only 5 of the reports included material which would permit more than a superficial evaluation of the member's personality structure, a basic factor in any psychiatric consultation.

Very few of the reports in the sample contain any indication of the individual's developmental history or of his psychological relationships to members of his family and other persons during this period. Only an occasional report contains information as to the member's present behavioral status -- his adjustment in his daily vocational, social, and avocational pursuits. Information as to present mental status is usually confined to a summary statement that there is no evidence of psychosis. Far more serious is the fact that one evaluation, made by a senior medical officer not trained in psychiatry, contains a description of behavioral signs which could be diagnostic of the early stages of schizophrenic psychosis. However, the report is not sufficiently comprehensive to permit a meaningful psychiatric evaluation of the obvious emotional disturbance, and it would appear that no further medical follow-up was made.

In short, the present written reports of psychiatric evaluation, as a whole, do not provide adequate information upon which to base decisions at the departmental level, if medical and sociological factors are to be considered in the disposition of cases involving homosexuality. First, there is insufficient clinical and historical information in the reports to permit an understanding of the individual and his behavior from a psychiatric viewpoint. Secondly, that information which is included usually consists of opinions, without the clinical evidence on which they are based, and a psychologically sterile recounting of details already available from the ONI investigation. This approach to the preparation of consultations omits the dynamic interpretative material which makes a report psychiatrically meaningful.

It is not surprising that the present reports of psychiatric evaluation are lacking in uniformity, scope, and detail as noted above. Medical officers not formally trained in psychiatry are seldom qualified to make an intensive evaluation of personality structure and dynamics. Moreover, they cannot reasonably be expected to recognize the more subtle indications of early psychosis. On the other hand, trained psychiatrists in the field frequently take the position that conducting and reporting a thorough study is not justified when their findings, other than those pertaining to competency, will not be considered in the disposition of the individual. There also is a

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considerable reluctance on the part of the psychiatrist to make a definitive statement, as he is so frequently requested to do, pertaining to whether the member being evaluated has actually participated in homosexual activity or will engage in such behavior at some time in the future. This reluctance becomes understandable when one considers that homosexuality is not a disease entity or an isolated condition but is only one of many possible symptoms of emotional disturbance or immaturity. Thus, in the face of denial by the individual, the psychiatrist is requested, in effect, to include information in his clinical evaluation which is impossible for him to provide with the professional techniques at his command.

In order to correct the present deficiencies in clinical evaluations and obtain a maximum contribution from psychiatry in dealing with the problem of homosexuality, it is necessary to revise the present philosophy of the directives pertaining to the classification and disposition of persons manifesting homosexual behavior. The psychiatrist is now forced to approach the problem with an administrative orientation as to what constitutes homosexuality which, medically, is both inconsistent and incorrect.

A thorough psychiatric evaluation will contribute not only a basic understanding of the individual and the psychological factors motivating the behavior under investigation, but it will permit disposition of the case in a manner which is in the best interests both of the naval service and the individual.

In order to provide a meaningful evaluation of the individual, the psychiatric examination should cover each of the following areas:

a. <u>A comprehensive history of the present homosexual episode.</u>

This includes a description of the time, place, and duration of the incident(s). A description of the other person involved (personal characteristics and previous homosexual experience) and his psychological relationship to the member being examined. Investigation of the emotional factors involved in the incident and the psychological meaning of the contact. For example, does this act represent adolescent curiosity, dependency on gang approval, prostitution, defense against loneliness, etc. Did it occur when the individual was lonely, isolated, angry, brooding, following rejection, failure, closeness to marriage, etc. What is the effect of being caught? What are the professed future plans regarding continuation of the behavior, desire for treatment, etc.?

b. <u>A comprehensive history of homosexual behavior.</u>

This is to present the total, current, cross-sectional clinical picture. That is, the homosexual behavior will be viewed as part of a total pattern in which it may fit the category of psychosis, neurosis, personality disorder, or within the range of normal. This history should emphasize the settings in which the homosexual behavior occurs, the purposes served, frequency, type, etc.

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c. Description of current behavioral status.

This section should include an evaluation of the individual's current work, social and interpersonal relationships, and his effectiveness in these areas. Also included are his attitudes toward his present duty status and the environmental situation in which he is living.

d. Description of personality structure and type.

The member's personality structure and type as seen in the interview, and as determined by psychological examination should be incorporated under this section. Is the individual immature, does he present evidence of a character disorder, personality defects or neurosis etc.?

e. Development of family history.

This section is devoted to the character and personality of the parents and siblings; the influence and relationships with members of the family; and the attitudes of the parents -- particularly toward sexual education and activity.

f. Birth, growth and development.

Significant events surrounding birth and care in infancy and childhood. Early neurotic determinants (persistence of enuresis, temper tantrums, sleep and food disturbances); early childhood memories; toilet training, etc.

g. Pre-service school and occupational history.

Extent and duration of education; learning difficulties; relationships with teachers and students; nature of studies. The occupational history should include information as to nature of duties, relationships with employers and fellow-workers, frequency of job changes, reason for change, etc.

h. Military history.

In addition to reporting the chronological sequence of duty stations and advancement in rate, this section should include a qualitative evaluation of performance; relationships to peers, senior petty officers, and officers; disciplinary difficulty, etc.

i. Social and religious history.

Of particular importance here is type of activities the individual engages in and is interested in; types of people he gets along with, and doesn't get along with; friends and his relationships with friends (leader, follower, social isolate); difficulties with police

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or juvenile authorities; when the individual left home and why. Also, religious beliefs, amount of participation in organized worship, and degree to which the individual is guided by his religious beliefs.

j. Comprehensive sexual-marital history.

Early sexual experiences; sexual instruction; onset of puberty and effect on the individual; types of sexual adjustment; heterosexual history; other sexual "deviations". If married, type of person, overall adjustment to marriage; relationship to spouse at time of homosexual behavior, etc.

k. Attitudes.

This section includes the individual's more general attitudes toward the Navy, sex, authority, his peers, and himself.

l. Physical and neurological examination, including past medical history.

Routine physical and neurological examination with particular attention to the possibility of subtle organic changes in mature persons. Report of individual's past medical history.

m. Mental status examination, including mental competence and sanity.

Appearance of the individual and his behavior during the examination. A determination of appropriateness of emotional response; general mood tone; possible thought disturbance (confusion, blocking, retardation, delusions); level of intellectual functioning, and evidence of intellectual impairment; adequacy of judgment; evasiveness, etc. Specific statement as to mental competence and sanity.

n. Summary of psychiatric examination and formulation of psychodynamics.

This section is concerned with integration of all the available psychiatric material to describe the individual as a person, his primary means of coping with the problems of daily living, important motivational influences, and the psychiatric significance of his homosexual behavior.

o. Opinions and recommendations.

The psychiatrist's opinion, based on the above information, as the likelihood of a recurrence of the homosexual behavior and the possibility of further illness if retained in service. (A recommendation also should be made as to appropriate disposition (return to duty, hospitalization, or separation).

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Detailed reports of psychiatric and psychological examination, combined with other less technical information, will provide a wealth of research data which can be used to cope more effectively with factors which are conducive to homosexual activity. Thus, in addition to the psychiatric evaluation outlined above, information should be obtained from the member's service record, psychological tests, and questionnaires to be completed by both the individual and the psychiatrist. Such data can be collected at the time of examination and will provide background material for the actual psychiatric evaluation and at the same time permit research on homosexuality without complicating the operational program.

It is highly desirable that all reports of psychiatric examination be referred to the Bureau of Medicine and Surgery for review prior to the case being acted upon by a dispositional board. This will result in more uniformity in reporting and will permit the resolution of any inconsistencies prior to board action. Such a program of review also will provide a form of supervisory control to insure full medical compliance with the pertinent directive. No significant delay in the final disposition of cases is anticipated.

A careful clinical evaluation provides an unusually rich source of material for use in determining appropriate disposition of cases involving homosexuality. The clinical evaluation should not be the sole factor used; however, it should be given even weight with administrative factors in determining the general course of disposition to be followed (discharge, return to duty, etc.). Determination of the appropriateness of disciplinary action or the character of discharge, in cases where separation is appropriate, should be governed by the same administrative considerations as are presently being used in the case of members with psychiatric disorders which are manifested by symptoms other than homosexuality.

Summary

Present directives tend to discourage adequate psychiatric reports due to the relative inflexibility of disposition procedures, and emphasis upon categorizing individuals into homosexuals, psychotics, or malingerers. Psychiatrists tend to feel that a comprehensive report is without purpose and to no avail. Reports by non-psychiatric medical officers fail to provide sufficiently comprehensive material due to lack of specific training. A thorough, comprehensive psychiatric evaluation is needed to permit adequate review and consideration for proper disposition at a departmental level. An outline of adequate evaluation is provided and will be prepared by the psychiatrist in the field. This data will be collected by coded questionnaires to be completed by the individual and psychiatrist along with a written report from the psychiatrist. These reports should be referred to the Bureau of Medicine and Surgery for review prior to dispositional action. This data is extremely important to accumulate for research purposes and future clear guidance.

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Recommendations:

In connection with the clinical evaluation, it is recommended that:

a. A detailed and comprehensive psychiatric examination be reported in each active duty case.

b. Sufficient detailed information be collected at the time of the psychiatric examination to permit continuing research on homosexuality in the naval service.

c. The general outline of the data to be collected at the time of psychiatric evaluation to be as follows:

(1) General background and identifying data (obtained from the service record and a questionnaire to be completed by the member concerned).

(2) Questionnaire to be completed by the examining psychiatrist.

(3) Comprehensive clinical evaluation covering the following areas:

(a) A comprehensive history of the present homosexual episode.

(b) A comprehensive history of homosexual behavior.

(c) Description of current behavioral status.

(d) Description of personality structure and type.

(e) Development of family history.

(f) Birth, growth and development.

(g) Pre-service school and occupational history.

(h) Military history.

(i) Social and religious history.

(j) Comprehensive sexual and marital history.

(k) Attitudes:

(l) Physical and neurological examination, including past medical history.

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(m) Mental status examination, including mental competence and sanity.

(n) Summary of psychiatric examination and formulation of psychodynamics.

(o) Opinions and recommendations.

d. All examinations be conducted by medical officers trained in the specialty of psychiatry.

e. All reports of clinical evaluations be reviewed by the Chief of the Bureau of Medicine and Surgery before the case is acted upon by a disposition board. Procedures should provide for expeditious processing.

f. The psychiatric evaluation be given equal weight with administrative factors in determining disposition of cases involving homosexuality.

6. Review procedures. Are they appropriate? Should a psychiatrist be added to the membership of Department review boards in all or certain cases?

Discussion:

This discussion pertains to the Departmental review that is made in the Bureau of Naval Personnel and Headquarters, Marine Corps of cases involving homosexual activities by naval personnel. The review of cases of discharged personnel by the Navy Discharge Review Board and the Board for Correction of Naval Records is not included in this discussion; but is treated hereinafter in the Board's report (Part I.E.).

Cases involving homosexual activities by naval personnel, active, inactive or retired, generally originate by voluntary confessions made to a chaplain, medical officer or commanding officer; reports by a third party witness that two or more individuals have engaged in homosexual activities; reports by the victims of unsolicited homosexual advances; confessions following investigations which implicate personnel other than the subjects of the investigation; Office of Naval Intelligence reports and reports received from the intelligence branches of other military services and Federal Governmental agencies; and convictions by civil authorities.

Upon receipt of information that an enlisted person on active duty in the naval service has engaged in homosexual activity, a commanding officer causes a complete investigation to be made. This investigation may be conducted by trained investigators assigned to certain commands or to a greater extent, with the cooperation and assistance of Naval Intelligence agents located within the District or area.

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In all cases a commanding officer submits a report, including a recommendation as to disposition, to the Chief of Naval Personnel or Commandant of the Marine Corps. These reports include the results of the investigation and all other matters that may be of assistance to Departmental reviewing authorities; a signed statement from the person investigated, which statement is witnessed and attested; sample charges and specifications in appropriate cases; agreement to accept an undesirable discharge in lieu of trial by general court-martial; a statement of awareness in certain cases that an undesirable discharge may be awarded because of anti-moral or anti-social traits; psychiatric reports; and statements of witnesses, if any.

Cases involving officer personnel generally originate in the same manner as enlisted cases. Following investigation and determination by a commanding officer or superior officer in the chain of command that processing under SECNAV Instruction 1620.1 of 5 June 1953 is required, a report is submitted to the Chief of Naval Personnel or the Commandant of the Marine Corps. The report includes a statement from the officer investigated, signed, witnessed and attested; statements of witnesses, if any; psychiatric reports; sample charges and specifications in appropriate cases; a resignation for the good of the service and to escape trial by general court-martial (in Class II cases), or for the good of the service, (in Class III cases); and the recommendation of the commanding officer or superior officer as to disposition.

Upon receipt of a case in the Department, it is revieved in the appropriate discipline or performance office in the Bureau of Naval Personnel or Headquarters, Marine Corps. This review is for the purpose of determining whether to return the case for further investigation or for trial by general court-martial. Upon determination that the case is complete in all respects, it is referred to a board of officers for findings, opinions and recommendation. Each case, except one involving trial by general court-martial, is referred to such a board. These boards are composed of three officers who are senior to the individual under consideration. The membership of the boards include at least one woman when a case of a woman is considered, and at least a majority of the members are reserve officers when the individual being considered is a reserve. All available information pertaining to the case is furnished the boards, including the report and recommendation submitted by the command, the duplicate service record in the case of enlisted persons, and the officer personnel records in the case of officers. Following study and evaluation, the boards may recommend anyone of the following actions and disposition:

a. Retain the individual.

b. Issue an enlisted person a discharge for the convenience of the Government, with the character of the discharge such as the service record warrants.

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c. Discharge an enlisted person under honorable conditions for unsuitability.

d. Discharge an enlisted person as undesirable under other than honorable conditions.

e. Accept the resignation of an officer as submitted.

f. Accept the resignation of an officer in other form.

g. Return the case to the command for additional information.

h. Resolve the case by court-martial trial if guilt is in doubt.

i. Request permission from the Secretary of the Navy to try the person by court-martial. (This recommendation is appropriate when a person has been tried and convicted in a civil court for homosexual acts.)

Following board action, each case is reviewed by senior officers in the Bureau of Naval Personnel or Headquarters, Marine Corps. Upon approval of the board action in enlisted cases, a letter is issued to the individual's commanding officer directing him to take the action as finally approved. Officer cases are forwarded to the Secretary of the Navy for final action. In the normal course of events the Secretary refers the case to the Judge Advocate General for additional review. Upon approval by the Secretary of the Navy, appropriate SECNAV orders are forwarded to the officer concerned, via his commanding officer.

In cases of inactive reserve officers the provisions of SECNAV Instruction 1900.2 are utilized in processing for administrative discharge. Under this Instruction, the board of officers previously described convenes and the officer concerned is afforded an opportunity to appear if he desires.

The Board's study of the Departmental review procedure discloses that it is fundamentally sound and adequate. Difficulty has been experienced, however, because of inadequate psychiatric reports. It is believed that more complete psychiatric reports will enable boards and reviewing authorities to better evaluate cases of persons being considered for disposition as homosexuals, will do much to detect those persons who may require additional psychiatric study and treatment, will assist reviewing authorities to better determine whether a person should be retained or discharged from the naval service, and, where appropriate, the character of the discharge to be awarded.

The Board's study discloses that Departmental review boards are composed of senior Navy and Marine Corps officers of sufficiently broad and diversified experience to guarantee fair and just consideration of all factors involved. Additionally, reviewing officers in the Bureau

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of Naval Personnel and Headquarters, Marine Corps, who review the recommendations of the boards, have had years of service experience and are qualified to render fair and just determinations, being ever mindful of the best interests of the naval service as well as those of the individual concerned.

A medical interpretation of the clinical evaluation should be made at departmental level. This may be handled either by having a psychiatrist attached to the disposition board or by review of the clinical evaluation in the Bureau of Medicine and Surgery, as recommended in paragraph C5 of "Clinical Evaluations" above.

In connection with the review of cases involving women, the Board finds that all reviewing authorities need some guidance, particularly as to what constitutes acts of homosexuality. It is believed, however, that furnishing copies of the report of this Board to disposition boards and improved clinical evaluations and medical recommendations will provide the necessary guidance.

Summary

a. Present Departmental review procedure is fundamentally sound and adequate, with the exception that there is no provision for medical review at the Departmental level.

b. It is not necessary that a psychiatrist be added to the membership of Departmental review boards, if Departmental medical review and recommendations are made available.

c. Some guidance is needed in connection with the review of cases involving homosexuality in women.

Recommendations:

a. Continue the present Departmental review procedure with the addition of review of the clinical evaluation and recommendations by the Chief of the Bureau of Medicine and Surgery.

b. Furnish for the guidance of disposition boards in the Bureau of Naval Personnel and Headquarters, Marine Corps copies of the report of this Board.

7. Responsibility to the Civilian Community.

What is the responsibility of the Navy, if any, to the community when discharging an habitual homosexual without punishment, treatment or identification as such?

Discussion:

It is the opinion of the Board, supported by testimony of witnesses appearing before it as well as statements of civilian law

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enforcement authorities that the Navy owes no responsibility to the civilian community with regard to homosexuals separated from the service excepting in cases of those falling within Class I who have exhibited vicious or dangerous tendencies or who have been involved in acts of perversion with minors.

In the words of Dr. Manfred S. Guttmacher, Chief Medical Officer of the Supreme Bench of Baltimore, "As far as the ordinary homosexual is concerned there appears to be nothing the service owes the community. Civilian authorities have a pretty high degree of tolerance with regard to the routine homosexual activity."

Recommendations:

a. The Chief of Naval Personnel and the Commandant of the Marine Corps, shall, only in cases wherein the homosexual has been determined to be a public menace or the offense for which he was separated involved children* report the case to the Federal Bureau of Investigation through normal channels for such action as may be necessary in the public interest.

*Attention is invited to the age limit of ten years proposed in the new model code.

3. Screening of applicants for enlistment.

Discussion:

There are three administrative procedures at the recruiting level which aid in the identification and rejection of a certain proportion of overt homosexuals who apply for enlistment or appointment in the naval service. However, these procedures, including police checks, background investigations when appropriate, and the routine enlistment physical examination, usually serve to eliminate only the more flagrant and exhibitionistic of the confirmed homosexuals.

It is possible that the proportion of homosexual applicants eliminated at the recruiting level might be slightly increased by making provision for an intensive psychiatric evaluation upon enlistment or appointment. However, past experience has indicated that psychiatric examination on the recruiting station level is of questionable validity in the identification of emotionally disturbed individuals and certainly would not be feasible in the naval service from the standpoint of the money and professional personnel required. Accordingly, it is doubtful if any modification of screening procedures at recruiting stations is indicated, providing the present procedures are carefully and thoroughly carried out.

Over a period of years, the Navy's program in preventive psychiatry has been developed and refined so as to overcome the limitations which are inherent in screening at the recruiting or induction station level. In fact, it is considered that the system of psychiatric screening now

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utilized at recruit training activities constitutes as adequate a program as can be developed at present for the detection of homosexuality in newly enlisted members. The fundamental premise of this program is that the intensive psychiatric screening must be conducted after the individual has actually entered the military environment. During the early period of training, many aspects of the individual's personality become apparent which are not readily discernible while he is still a member of the civilian community, to which he has made a psychological adjustment. This is particularly true in connection with homosexuality, inasmuch as exposure to an exclusively masculine group and close contact with shipmates in the course of daily living frequently makes the sexual conflict more apparent to both the individual concerned and the psychiatric examiner.

Broadly speaking, homosexuality is only one of a number of symptoms of emotional disturbance or personality disorder. While some persons display evidence of their emotional disturbance in such behavior as repeated AWOL's or excessive drinking, other persons may manifest evidence of the same type of psychiatric disorder through homosexual behavior. In addition, homosexuality also may be symptomatic of a number of basically different psychiatric disturbances. Therefore, in the face of denial by the individual, there are no specific criteria which will permit the psychiatrist to say that a given individual has fixated on the symptom of overt homosexuality. It is even more difficult to identify persons who will at some time in the future succumb to homosexual acts. Regardless of the time and effort spent in screening of this nature, so much depends on the particular set of circumstances surrounding the commission of homosexual acts, in the case of persons who are not confirmed homosexuals, that a more elaborate screening program on the enlistment level, with the few specific exceptions which are discussed below, would not be realistic. Support of this position is seen in the fact that cases are repeatedly encountered where members have successfully passed a rigorous screening for top secret clearance and later proved to be confirmed homosexuals. The exclusion from service of all persons who, on the basis of their personality structure, could conceivably engage in homosexual acts is totally unfeasible in view of the large proportion of the young adult male population which falls in this category.

At the present time, the Navy's preventive psychiatry program is so structured as to provide for the psychiatric screening of all new recruits at the three Naval Training Centers and two Marine Corps Recruit Depots. In addition, all newly appointed midshipmen at the Naval Academy receive a thorough neuropsychiatric evaluation. There are, however, several large programs where the newly enlisted or appointed members do not receive a specialized psychiatric examination. Notable among these are the Naval Reserve Officer Training Corps students in the college program, Officer Candidate Schools, Naval Aviation Cadets, and the organized reserve units.

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The lack of an adequate psychiatric screening program for members of reserve units is of particular significance in view of the size of the inactive reserve component. However, the development of a satisfactory program for screening of either Organized Reserve or NROTC Units constitutes an extremely complex problem. This is true for two reasons: first, there are insufficient qualified psychiatric personnel on active duty to conduct the necessary examinations, with the units being so widely scattered and the number of personnel attached to each organization so small. In addition, members in these two groups are still living in an essentially civilian environment and are not subjected to the stresses which might aid in bringing disqualifying homosexual tendencies or conflicts to the surface.

Present deficiencies in the screening of inactive reserve personnel can be corrected by modification of two aspects of the reserve program. First, screening of all newly enlisted reserve personnel should be accomplished during their first period of active duty for training. A second improvement in the screening of reserves could be made by providing billets in key organized units for psychiatrists and clinical psychologists. At the present time, there are no billets in the reserve program for these specialists, although a number of well-trained and experienced officers have indicated an interest in serving in a pay status. The establishment of two or three billets for psychiatrists and clinical psychologists in each of the larger metropolitan areas would be sufficient to provide for the routine screening of a large number of reserve units. Moreover, during a two week tour of active duty these officers could evaluate members of reserve units in more isolated areas. It is important that priority be given to the consideration of the establishment of psychiatric billets in those areas where reserve units are geographically isolated from naval medical activities with psychiatric facilities. This is a subject that could well be studied in connection with the Reserve Program.

It is understood that newly enlisted reserves are normally ordered to two weeks active duty for training at a recruit training activity, if they are not immediately ordered to active duty, within the first year. These personnel should be screened psychiatrically during the training period. The other reserves going immediately to active duty will get the normal psychiatric screening.

A neuropsychiatric screening program for the Officer Candidate School can be instituted if additional billets for psychiatrists and clinical psychologists are made available at the Naval Station, Newport, Rhode Island. To some extent, the lack of screening of Aviation Cadets by specialists in neuropsychiatry is compensated for by the extensive medical program conducted by flight surgeons, and no change in this program is recommended.

Summary:

Present psychiatric screening procedures appear to be adequate except in those areas covered by the recommendation below. More intensive

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screening procedures at the recruiting level would not be justified on the basis of the number of actual or potential homosexuals that would be excluded at that stage.

Recommendations:

In connection with the screening of applicants for enlistment and appointment, it is recommended that:

a. No basic changes be made in screening procedures at the recruiting or training station levels; however, the present procedures should be carefully followed.

b. A psychiatric examination should be instituted as part of the initial physical examination for Regular NROTC midshipmen and for contract NROTC students prior to entering the senior division.

c. Consideration be given to establishing a limited number of pay status billets in organized reserve units for psychiatrists and clinical psychologists as part of the Naval Reserve Program. This would permit the elimination of some of the homosexual individuals who are separated at present only after they have been ordered to active duty.

d. Enlisted reserve personnel, not immediately ordered to extended active duty, be screened psychiatrically during the normal two weeks active duty for training period.

e. Additional billets be established for two psychiatrists and one clinical psychologist at the Naval Station, Newport, Rhode Island, to permit the inauguration of a formal program for screening reserve officers entering the service through the Officer Candidate School Program.

9. Should women be treated differently than men?

Discussion:

The consensus of most witnesses before the Board was to the effect that there should be no difference in the treatment of men or women homosexuals. Present procedures in the Army, Air Force, and Navy indicate that there is now no dissimilarity in handling.

It is to be noted that the incidence rate of homosexual activity is much higher for the female than male as reflected in the statistics available to the Board. This higher rate may result from:

a. Closer supervision of women members of the service.

b. Misinterpretation of certain normal female propensities as homosexual acts.

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c. Greater susceptibility of the female to such activity in the abnormal military setting.

d. Military service may be more attractive to females with latent homosexual tendencies.

This is in contradiction to the fact that homosexual activity in the female is difficult to detect.

Homosexual activity of female members of the military has appea to be more disruptive of morale and discipline in the past than similar male activity.

Of concern, and interest to the Board, was the apparent need for a more definitive approach and analysis as to what constitutes homo sexual activity among women as revealed by the testimony before the Board.

The mores of present day society accept the fact that women kiss and embrace each other on meeting and may live together and occupy the same bed without any connotation of homosexuality, under circumstances where similar acts on the part of males would be immediately branding.

The difference in the psychological and physiological make-up of the female, the greater need for emotional outlet, and currently socially accepted practices must be evaluated in any allegation as to homosexuality. Many acts which on occasion are in fact normal would in excess indicate homosexual tendencies.

It is considered impossible to provide a fixed and concise overall definition as to all that constitutes homosexual activity in the female. A general definition of a homosexual act is that conduct between two or more persons of the same sex committed or engaged in with the intent or for the purpose of sexual arousal or gratification. There can be homosexual activity without genital contact, although some authorities would define a homosexual act as one which produces orgasm. Primary reliance must, however, be placed on an overall appraisal of the individual's activity as to whether a pattern is set representing the habitual performance of persons homosexual in inclinati

Homosexual activity by women is harder to detect. Women are normally more secretive, are not as promiscuous, and are more seclusive than the male, whereas the male is not as selective either as to partner nor as to locale as the female.

Differences in interpretation of what constitutes homosexual activity is reflected in the differences in categorization between the Marine Corps on the one hand and the Navy on the other. Testimony shows that the majority of recent cases in the Marine Corps have been

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processed as Class III, with a convenience of the Government discharge, while in the Navy they have been processed as Class II with an undesirable discharge.

Summary:

a. Homosexual activity is harder to detect in the female.

b. Many acts normal to the female are indicative of homosexuality in the male.

c. Apparently, there are uncertainties in some quarters as to what constitutes homosexual activity in the female.

d. Consensus that there should be no difference in the handling of male or female homosexuals.

Recommendations

a. No attempt be made to differentiate between men and women in the Instruction with respect to procedures or disposition for homosexual activity.

b. Careful review be made of all allegations concerning homosexual activity of female members of the service to ensure that a pattern representative of homosexual conduct is present, as distinguished from normal socially accepted behavior.

10. Indoctrination and Education of Recruits on Homosexuality.

Discussion:

On 14 November 1952 the Secretary of the Navy instructed the Chief of Naval Personnel to establish procedures for implementing the program for the indoctrination of naval personnel at Naval Training Centers on the subject of homosexuality. On 4 December 1952 the Chief of Naval Personnel appointed a committee to implement the program. This committee is still functioning. A letter of 22 December 1952 from the Chief of Naval Personnel, Training Division, Bureau of Naval Personnel directed that the instructions on homosexuality be extended to include women. Current procedures provide that the instruction be a one-period, introductory, stereotyped lecture to be delivered to recruits, male and female, during recruit training by a team of officers namely, medical officer, chaplain, and a line officer. The general purpose is to acquaint the recruit with the existence of homosexuality and the bad effects that involvement would produce. Homosexuality as such is identified as a bad thing. Attempt is made to explain the nature of homosexuality. Suggestions are offered to instructors that they be calm, serious, and objective and that the subject be presented in plain language. Case histories are presented. Question of security

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risk is introduced, and the Navy's attitude is presented on the subject. (Sample lectures attached as Appendix 46, Part II.) The Board noted that no planned educational program exists beyond the recruit level.

Comments:

A description of the ongoing program as described above was presented to the Committee by Chaplain Garrett who felt that the program was quite satisfactory. He strongly suggested that the standard written text be continued at all activities since individual variations in the presented material were sometimes extreme and embarrassing in their results.

There is no present information available to indicate the degree of effectiveness of this educational program. There is no information to demonstrate that any harm has been produced or on the other hand that any direct benefit has occurred. While it seems reasonable to provide information in this area, some caution is required in over-presenting and over-emphasizing the material in so far as this tends to create a sense of undue importance or curiosity in this subject. Some of the Committee felt that this indoctrination should be aided and abetted by a prepared film on the subject of homosexuality. This would have the advantage of more professional skill and careful handling and uniform presentation. The Marine Corps recruits are not given a routine regular lecture on this specific subject.

Summary

In 1952 the Secretary of the Navy directed the Bureau of Naval Personnel to provide some instruction to recruits on the subject of homosexuality at the various training centers. This program has been implemented for the past four years. The presentation is divided between the medical officer, chaplain and line officer and various medical, ethical, and disciplinary aspects are presented. Evidence is inconclusive regarding the benefit or disadvantage of this presentation.

Recommendations:

a. That the present educational program continue as the responsibility of a committee appointed by the Chief of Naval Personnel.

b. That an effort be made to determine the effectiveness of the present educational program preliminary to instituting any changes therein.

11. Security implications of the homosexual.

Discussion:

Executive Order 10450 of 27 April 1953 provides that certain suitability factors be investigated to develop information as to whether

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the employment or retention in employment in the Federal service of the person is clearly consistent with the interests of the national security. Among these factors are:

> "(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.
>
> (iv) An adjudication of insanity, or treatment for serious mental or neurological disorder without satisfactory evidence of cure.
>
> (v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security."

Department of Defense Directive 5210.9 of 17 June 1956 and SECNAV Instruction 5521.6A of 31 January 1957 similarly make these suitability factors applicable under the Military Personnel Security Program, further providing that, unless other security factors are primarily involved, action toward separation will be instituted in these cases under other appropriate regulations and directives.

The Interim Report of the Subcommittee on Investigations of the Committee on Expenditures of the Senate, Senate Document 241, 81st Congress, 2nd Session 1950 (Part II, Appendix 24) reports an investigation into the employment by the Government of homosexuals and other sex perverts. The following quotes are pertinent to this problem:

> "The subcommittee sincerely believes that persons afflicted with sexual desires which result in their engaging in overt acts of perversion should be considered as proper cases for medical and psychiatric treatment. However, sex perverts, like all other persons who by their overt acts violate moral codes and laws and the accepted standards of conduct, must be treated as transgressors and dealt with accordingly."
>
> "Those charged with the responsibility of operating the agencies of Government must insist that Government employees meet acceptable standards of personal conduct. In the opinion of this subcommittee homosexuals and other sex perverts are not proper persons to be employed in Government for two reasons; first, they are generally unsuitable, and second, they constitute security risks."
>
> "Overt acts of sex perversion, including acts of homosexuality, constitute a crime under our Federal, State, and municipal statutes and persons who commit such acts are law violators. Aside from criminality and immorality involved in sex perversion such behavior is so contrary to the normal accepted standards of social behavior that persons who engage in such activity are looked upon as outcasts by society generally."

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In continuation of unsuitability factors the subcommittee mentions:

a. Fact that perverts are frequently subject to blackmail.

b. Generally believed that overt acts of perversion indicate lack of emotional stability and weakens the moral fiber of an individual.

c. Presence in Government tends to have a corrosive effect on fellow employees.

d. Tendency to seek his own kind and gather perverts about him.

> "The conclusion of the subcommittee that a homosexual or other sex pervert is a security risk is not based upon mere conjecture. That conclusion is predicated upon a careful review of the opinions of those best qualified to consider matters of security in Government, namely, the intelligence agencies of the Government. ---- All of these agencies are in complete agreement that sex perverts in Government constitute security risks."

The Subcommittee mentions the following among security factors:

a. Lack of emotional stability and weakness of moral fiber makes them susceptible to blandishments of espionage agents.

b. Tendency to congregate facilitates recruitment and clandestine relationships.

c. Susceptibility to blackmail.

> "The subcommittee in pointing out the unsuitability of perverts for Government employment is not unaware of the fact that there are other patterns of human behavior which should be considered in passing upon the general suitability or security-risk status of Government employees. There is little doubt that habitual drunkards, persons who have engaged in criminal activities, and those who indulge in other types of infamous or scandalous personal conduct are also unsuitable for Government employment and constitute security risks. However, the subcommittee, in the present investigation, has properly confined itself to the problem of sex perverts."

Numerous cases were recited to the Board which represented examples of homosexuals involved in security infractions, some to the extent of espionage. Examples are discussed in the article by Richard and Gladys Harkness which appeared in September 1955 issue of Readers

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Digest (Part II, Appendix 51). On the other hand cases were brought to the attention of the Board where individuals seperated after long, honorable and faithful service have subsequently been uncovered as homosexuals.

Even on the basis that the Kinsey report exaggerates the percentage of those exclusively homosexual in nature to those having as much homosexual as heterosexual natures, there must be a large number of these categories in the service who have never been discovered and who will not be discovered prior to separation.

The Board was unable to uncover any statistical data to prove or disprove that homosexuals are in fact more of a security risk than those engaged in other unsocial or immoral activity. Even the number of cases of blackmail revealed as a result of past investigations, which were cited to the Board, is negligible.

The Board feels that it would be presumptuous to make contentions contrary to those expressed in the Congress and by Executive Order on the basis of information available to it.

The Board is in agreement that a homosexual is not necessarily more of a security risk, per se, than other transgressors of moral and criminal codes. Further the Board recognizes that the propensities and vulnerabilities associated with homosexual activity, as in the case of promiscuous heterosexual activity, do provide serious security implications.

Summary

a. Current Executive and Departmental security orders and instructions require investigation and elimination of sexual perverts, including homosexuals, from Government service and military service.

b. Sex perverts, including homosexuals, are not handled under security directives unless other security factors are primarily involved.

c. No statistical studies are available to indicate the percentage of homosexuals implicated in security violations compared to other malefactors.

d. Although it is not felt that homosexuality is more of a security problem than other types of concupiscence, the propensities and vulnerabilities of homosexuals do provide serious security implications.

e. If the Kinsey report is valid, there must be numerous homosexuals now in service who have not been discovered, and will not be discovered prior to separation. This does not necessarily imply an unacceptable security problem.

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Recommendations:

a. A statistical study be initiated by the Director of Naval Intelligence in coordination with the Chief of Naval Personnel and Commandant of the Marine Corps to develop factual data on the incidence of security implications in homosexual cases as well as in categories involving other types of moral turpitude and criminal activity. This study should be extended to other agencies of the Government if practicable.

b. That cases involving homosexuality continue to be handled on other than security grounds, where practicable.

12. Investigative procedures.

Discussion.

By SECNAV Instruction 5430.13A of 10 August 1954 the Director of Naval Intelligence is assigned investigative jurisdiction and responsibility within the Naval Establishment of, among others:

> "Major violations of the Uniform Code of Military Justice, such as murder, manslaughter, rape, larceny, robbery, forgery, mayhem, sodomy, arson, mutiny, sedition, extortion, burglary, perjury, and certain conduct punishable under Articles 133 and 134 of this Code, such as smuggling, trafficking in narcotics, black-market activities, and violation of customs, postal and currency regulations."

In addition, SECNAV Instruction 5521.6A of 31 January 1957 requires that the Director of Naval Intelligence render investigative services, on request, in connection with the evaluation of suitability factors referred to in connection with the discussion of Executive Order 10450, item C11 above.

In implementation of the foregoing responsibilities with respect to sexual misconduct, and homosexuality in particular, the Director of Naval Intelligence issued ONI Instruction 5520.15B of 15 October 1956 as guidance to his investigative agencies.

It was revealed in the testimony that certain large naval stations have investigative personnel within the command. In these, it is common practice to initiate the investigations without reference to the Director of Naval Intelligence; however, ONI is called in at certain stages of the investigation in many cases.

Representatives of the Director of Naval Intelligence explained in detail the procedures and policies in force in the Office of Naval Intelligence with respect to the conduct of investigations and interviews. The following are the highlights of the presentation:

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a. Investigations in this area are initiated only by request of a command or other responsible authority, i.e., not on the initiative of the Director of Naval Intelligence or his representatives.

b. In all investigations, interview is not attempted until all other pertinent investigative leads have been covered.

c. In conducting an interview:

(1) The individual is first invariably warned of his rights under the Code of Military Justice.

(2) The individual is informed of the purposes of the interview but is not normally given the results of the investigation or identity of informants. Sometimes fragmentary information is revealed to facilitate the interrogation.

(3) If a woman is involved, she is always offered the opportunity, which is rarely accepted, to have another woman present.

(4) Threats or use of force by interviewers are not tolerated.

(5) It is not normal procedure to ask individuals if they desire counsel prior to interrogation.

(6) The meaning of terms used are explained in order to preclude retraction of confession on grounds of lack of understanding.

A recommendation was made that, in some cases, in lieu of or prior to an ONI investigation, it might be better to have trained personnel men (Chief Petty Officers) interview persons suspected of homosexuality. The psychiatric examination should not be given after a person has been interrogated for hours as, by that time, he is a disturbed person.

It is conceded that in many instances a preliminary investigation is essential in order to determine whether or not there is a case of merit on which to base a request for action by the Director of Naval Intelligence. Such preliminary investigation should, however, not be used as a basis for failure to request the services of the Director of Naval Intelligence where the facts warrant. Furthermore, due consideration must be given to the best interests of the service at large and the fact that many investigations have been compromised and nullified by local action and delay in requesting the services of trained investigators.

In this connection, it must be remembered that a psychiatric evaluation is only as good as the facts made available to the psychiatrist. Therefore, the facts in the investigation should be made available to the psychiatrist making the evaluation.

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Summary:

a. The Director of Naval Intelligence is by Secretary of the Navy directive assigned investigative jurisdiction and responsibility of certain major violations of the Uniform Code of Military Justice, including those categories covering sexual perversion and homosexuality.

b. Certain naval stations have local investigative personnel.

c. In so far as can be determined, responsible agencies of the Director of Naval Intelligence provide all the rights accorded by law and other instructions.

d. The Director of Naval Intelligence initiates investigations only on request of responsible authority.

Recommendations:

a. That no changes be made in procedures or methods currently employed by the Director of Naval Intelligence in investigations of homosexual offenses.

b. That the investigative services of the Director of Naval Intelligence continue to be requested in accordance with the responsibilities assigned by the Secretary of the Navy whenever the information in the case warrants.

c. That the facts from the investigation be made available to the psychiatrist evaluating the individual.

13. Deterrents:

Are the judicial and administrative punitive deterrents provided by the military helpful in combating homosexuality?

Discussion:

The answer to this question can be in the affirmative providing one considers certain specific areas in which the offender may fall.

The Board found agreement among the witnesses that the threat of court-martial or administrative discharge had no deterrent effect upon the true homosexual. Nor would the Class I offender be long deterred by threat of court-martial. However, the possible experimenter, the immature and the "tendencies" man are to varying degrees, dependent upon the particular personality involved and the homosexual drive present, deterred by the fear of criminal or punitive administrative action.

We must consider that, unlike the minor punishments usually incurred for the non-forcible homosexual acts in civilian life, conviction by court-martial or administrative discharge for homosexual acts not only results in separation from the service but brings about a loss of rights normally available to veterans. In addition, social and

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economic readjustment, for the convicted or administratively discharged homosexual (undesirable type), upon re-entry to civilian life is difficult.

Discharge under other than honorable conditions for homosexual behavior is a necessary measure to curb the individual who, to avoid military service, is willing to be classified as this type of offender.

It is apparent to the Board that deterrents in the form of possible trial by court-martial or administrative discharge will, to an undetermined degree, be effective upon those individuals who have not adopted homosexuality as a "way of life". The Board has found no substitute for this punitive action which would in any sense be considered of value as a deterrent.

Summary:

a. Punitive action in the form of court-martial or administrative discharge is a deterrent to a substantial degree for most individuals.

b. This punitive action, in non-forcible cases, is more severe than in civilian life.

c. There is no plausible substitute which would produce an equal degree of deterrence.

Recommendations:

a. That provisions be retained for separating personnel for homosexual behavior by court-martial or unfavorable administrative discharge.

b. That there be no relaxation in the broad concept that the service cannot tolerate homosexual behavior.

c. That punishment, though varying in degree dependent upon the circumstances attendant in each case, will be meted out in cases of homosexual behavior.

d. That the consequences of unfavorable discharges be more forcefully and frequently brought to the attention of all personnel.

14. Statistical Analysis.

Discussion:

In order to determine the magnitude of the homosexual problem and whether emphasis should be placed on any particular aspect, the Board requested the Chief of Naval Personnel and Commandant of the Marine Corps to provide the latest available statistics concerning homosexuals.

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The Board was fortunate in that the Chief of Naval Personnel made available a detailed preliminary study of all enlisted cases coming to Departmental attention subsequent to July 1956. Although the study is not sufficiently broad to draw conclusions, the results are considered of sufficient interest to attach as enclosure (3) hereto.

In general the Board found that little if any effort has been expended in assembling statistical information for use in an overall analysis of the problem. In the military field, the Board was able to obtain statistics showing the number of cases, disposition and incidence rate for various years in the Army, Navy and Air Force and the preliminary study of some 476 cases from the Chief of Naval Personnel, referred to above. In so far as could be determined, the Kinsey Report contains the only valuable statistical study in the civilian field.

The following observations drawn from these statistics are of general interest:

a. Enlisted personnel. The percentage of active duty strength separated on homosexual charges does not vary radically from year to year. For 1955 the percentage of active duty strength separated was .1938 for the Navy, .132 for the Air Force, .0832 for the Army, and .16 for the Marine Corps.

b. Officer personnel - Navy. There is somewhat more variation in the percentage of officers on active duty separated from year to year than in the case of enlisted personnel. However the overall percentage rate of separations has been constant for the last three years. In 1956, the percentage duty strength separated was .068 active duty, .011 inactive duty and .025 overall.

c. The Chief of Naval Personnel's preliminary study of a small sample of enlisted homosexual cases reviewed indicate:

(1) The majority of cases are in the group 18 to 20 years of age.

(2) The majority of individuals are in the first enlistment.

(3) A slightly higher percentage are in mental group II.

(4) 67.9% occur in civilian settings, while only 32.1% occur on ship or station.

(5) The greatest frequency occurred in those completing high school, but not entering college.

(6) The highest incidence in the group is from hospital rates, journalists, and Waves.

(7) The highest frequency is among those from small towns.

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(8) Individuals having a disrupted family background may show slightly more tendency to sexual aberration.

(9) The majority have had both pre-service and in-service homosexual experiences.

The Military Departments are in an excellent position to provide essential data in this field and the Board so recommends. The Board requested representatives of the Chief, Bureau of Medicine and Surgery to review the preliminary study underway by the Chief of Naval Personnel to determine additional factors that should be covered to ensure the maximum future value from a psychiatric point of view. Some of these factors are reviewed in Section C, Item 5 above. Complete recommendations will not be available, however, prior to the submission of this report.

Summary:

a. Percentage-wise the number of cases of homosexual behavior coming to administrative notice is small.

b. There are probably many homosexuals in the service that are never discovered.

c. Presently available statistics on homosexual behavior are not satisfactory.

d. The Military Departments can make a large contribution toward understanding the problem of homosexuality if the proper statistics are kept.

Recommendations:

a. That the Chief of Naval Personnel in coordination with the Chief of the Bureau of Medicine and Surgery continue the development of a statistical basis for study of the problem of homosexuality. The factors decided upon should be susceptible to IBM card reporting if practicable.

b. That when completed, a trial run be conducted to determine practicability.

c. That if the foregoing test sample is determined to be practicable, the collection and analysis of data be continued on a permanent basis.

d. That the Army and Air Force be advised in the premises and invited to participate in order to assemble a body of statistical data for future study.

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15. Policies in other Government Agencies.

a. Civil Service Commission Policy

Between 85-90% of all federal civilain employees are covered by Civil Service Regulations. For many years these regulations have listed "immoral, indecent or notoriously disgraceful conduct" (or similar general phraseology) as grounds for rejection for, or separation from, federal employment. Since 1950, homosexuality has been specifically listed as an "unsuitability" factor, barring employment.

It is important to distinguish "suitability" standards which the Civil Service Commission attempts to enforce, and "security" standards which are enforced normally by the various hiring agencies under entirely different criteria. Aside from its investigative function, the Civil Service Commission makes suitability decisions for nearly all non-sensitive positions. Decisions involving sensitive positions are made by the hiring agency.

Separations for unsuitability are ordinarily made under standard Civil Service procedures, NCPI 45 and 210 controlling. Nearly all cases of homosexuality or homosexual conduct are so handled. Rarely is a case involving homosexuality disposed of under NCPI 29, the Civil Service regulation concerning security.

The vast majority of all federal agencies are covered by Civil Service Commission rules, including the Department of Defense. However, there are some notable exceptions, such as certain professional and policy-making employees in nearly every agency, and all, or nearly all, employees in certain intelligence or classified defense agencies. These excepted individuals and agencies are covered, however, by parallel regulations of their own, which in some instances are probably more strict than Civil Service "suitability" standards.

About 2% of all Civil Service investigations result in rejection or separation for suitability reasons. There are no set figures on the number or percentage of these in which homosexuality or homosexual conduct was a factor; however, it is believed to be small. Several different suitability criteria could be involved, so it is difficult to make an accurate estimate.

The Civil Service Commission judges each case involving allegations of homosexual conduct on an individual basis, realizing that one act does not necessarily indicate homosexuality. Thus it is possible for a one-time offender to be cleared for employment, suitability-wise. It is also possible for such a person to be rejected by a hiring agency for security reasons.

The Civil Service Commission must make a determination of suitability within eighteen months after beginning of employment, or

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release jurisdiction to the hiring agency. After eighteen months, full Civil Service procedures must be utilized in proceeding against an employee.

Little incidence of homosexuality comes to light among female employees.

The Civil Service Commission accepts job applications from individuals discharged from the service with other than honorable, and with dishonorable, discharges, provided at least a year has elapsed since discharge, (exception for treason, desertion in face of enemy, loss of citizenship type of case). No figures available as to how many such dischargees have applied, or been accepted from application, but each case is considered on an individual basis, conduct since discharge being evaluated as well as conduct provoking the discharge.

Persons discharged by the Civil Service Commission are not permanently barred from further federal employment. It is rather difficult for a homosexual to show rehabilitation, however.

b. Red Cross Policy.

As a matter of interest, the Board has been informed by the Security Division of the American Red Cross that individuals involved in homosexual conduct are summarily dismissed, no attempt being made to distinguish between habituals, one-time offenders, or mere tendency cases.

c. Veterans Administration Policy.

With respect to the according of certain rights and benefits to veterans, the Administration pursues the following policy:

(1) If the discharge is honorable or under honorable conditions, full rights are provided.

(2) If the discharge is undesirable or punitive, due to homosexual acts, it is usually considered to be a dishonorable and the holder is barred from any rights or privileges.

This policy is enforced rigidly. 19 Federal Register 6918 specifically provides that an undesirable discharge, whether or not to escape trial by general court-martial, will generally be considered to be dishonorable and a bar to benefits under the Servicemen's Readjustment Act, as amended.

d. U. S. Coast Guard

Within the Treasury Department, uniformed personnel of the Coast Guard are governed by a directive concerning homosexuality which,

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to a large extent, is a copy of the Navy Department Instruction on the same subject.

16. Attitude and policies toward homosexuals representative of society at large.

Discussion:

It is the belief of Board members based upon their own experience and the testimony presented to the Board during this inquiry, that present day society generally finds homosexual behavior unacceptable and individuals who by their actions have become classified in their communities as homosexuals are persona non grata.

There is clear evidence that certain segments of society, such as the medical and legal professions, have been attempting to present deviate sexual intercourse as matter less serious in its criminal aspects than present statutory prohibitions portray them. The American Law Institute, in presenting for consideration by the various legislatures the "Model Penal Code" deals with all types of sexual offenses and has taken a more moderate approach both toward the offenses and the punishments to be awarded.

In varying degrees deviate sexuality has been regarded with intense aversion in nearly all times and civilizations, and subject to condemnation by religious interdict or severe secular punishment. Proposals to exclude from the criminal law all sexual practices not involving force, adult corruption of minors or public offense are based upon various grounds: No harm to the secular interest of the community is involved in atypical sex practice in private between consenting adult partners; this area of private morals is the distinctive concern of spiritual authorities and has been so recognized in a recent report by a group of Anglican clergy; as in the case of illicit heterosexual relations, existing law is substantially unenforced and the practicalities of police administration must be considered; existence of the criminal threat probably deters some people from seeking psychiatric or other assistance for these emotional problems.

In society at large this new approach toward sodomy and related offenses may well be necessary. However, the Board members, believing basically in a more enlightened approach to the problem of homosexual behavior, continue to recognize the necessity within the naval service to adhere to the policy of general non-acceptance of the homosexual offender as a member of its organization. Moreover, that punitive deterrents, though they may be less severe than heretofore, must be applied for the protection of the morale and integrity of the service as a whole.

Summary:

a. Homosexual behavior today is not to any measurable degree more acceptable to society at large than heretofore.

b. Certain segments of society (medical and legal) are attempting to formulate a less severe attitude in certain areas.

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c. The naval service should maintain a policy of non-acceptability of homosexual behavior.

Recommendations:

a. Maintain in great part the present service approach to the problem of homosexual behavior.

b. Be alert to keep abreast of any widely accepted changes in the attitude of society at large toward the overall problem.

c. The service should not move ahead of civilian society nor attempt to set substantially different standards in attitude toward or action with respect to homosexual offenders.

17. Post-Service Adjustment.

Discussion:

The Director of Naval Intelligence was provided the identity of 37 individuals, selected as a statistically valid sample, who were discharged from the naval service during the late fall of 1955 under the provisions of SECNAV Instruction 1620.1 by reason of homosexual activity, with a request that appropriate discreet inquiries be made to determine each individual's post-service adjustment, on the points summarized hereinafter. Thirty-six reports have been received, of which one is incomplete. Analysis of these reports show the following:

a. Content of Sample. The sample includes 2 CPO's, 3 PO1's, 1 PO2, 4 PO3's, 13 SN's and FN's, 12 SA's, FA's and AA's, and 1 Recruit. The above includes one Wave SA. One report is incomplete and one individual has disappeared.

b. Marital Status. Nine (26%) were or have, since discharge, been married. One of these has been divorced. Five (14%) have one or more children. The Wave is recently married. Twenty-four (68%) are known to be single, although three or four of these are dating with prospects of marriage.

c. Domicile. Those married are presumed to be maintaining a home. Of twenty-four single men whose whereabouts is known, nine (37%) live with parents, five (21%) live with a parent, three live with relatives, two alone, and on five, there is no information.

d. Employment. Of thirty-two on whom positive information was available, only two, both recently married young apprentices, one with one child, were reported unemployed. The remaining thirty have been continuously, and in some cases, very adequately employed or occupied since discharge as follows:

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Fathers Business	2	Guard (Burns Det. Agency)	1
Store Clerk	5	Hospital Lab. Technician	1
Office Worker	3	Technicians (Electrial and Electronic)	2
Student (Technical)	1	Ass't Funeral Director	1
Industrial Worker	4	Misc. (Waiter,Lifeguard,etc.)	3
Truck Driver	1	* Unemplcyed	2
Route Salesman(Milk,Bakery)	2	Unknown	4
Laborer	4	TOTAL	36

*Both married.

e. Discreet inquiries of neighbors and employers elicited the following concerning the current civilian reputation of the individual:

(1) Civilian Reputation.

General (credit, police, community) -

Excellent	1
Very good	*6
Good	16
No derogatory info	2
Fair	**4
Poor	2
Bad	1
Terrible (sic)	1
Unknown	3
TOTAL	36

* Includes one evaluated prior to man's arrest on 1/27/57 for sexually molesting a 15 year old boy.

** Includes two with juvenile and minor traffic violation records.

(2) Community Opinion on Cause of Discharge.

Honorable	3
Medical, UHC	4
Under honorable conditions	17
Questionable discharge	2
Bad discharge	1
Unknown/no opinion	9
TOTAL	36

(3) Apparent Sexual Orientation, by Community Report.

Judged queer/odd	3
Judged positively normal	9
No Opinion	24
TOTAL	36

(4) Apparent homosexual orientation at time of undesirable discharge:

Unknown/uncertain	9
Homosexual (admitted, long suspected, apparent from act)	*18
Passive partner (1-2 known acts)	6
Homosexual beginner (admitted tendency, claimed limited experience)	** 3
TOTAL	36

* Includes one UD striker, very successful civil adjustment.

** Includes two senior petty officers.

Summary:

It is evident from the data contained herein that the fact of undesirable discharge under the provisions of SECNAV Instruction 1620.1 has had relatively little adverse effect on the post-service adjustment of these individuals. Of cases analyzed, at least 83% are regularly employed in civilian situations which compare favorably with the in-service status. 60% enjoy a general reputation in the community and as credit risks of good or better while nothing positively bad is known about another 16%. In fact, only 11% were characterized as having a poor or bad reputation. The community believed that 24 or 67% had been discharged honorably or under honorable conditions for some respectable reason and ventured no opinion on another 9 or 25%. Only 3 were considered to have gotten a bad discharge, of which 2 were presumed for homosexuality. One additional dischargee committed a homosexual offense while the survey was in progress. Study of the available records on the individual's homosexual orientation at the time of discharge indicates that at least half of those discharged were clearly admitted or long suspected and evident homosexuals in the accepted sense of the term. It is evident that in the absence of flagrant homosexual habits and attitudes, the civil community has little knowledge of or interest in sexual orientation of its members. The character of or reason for discharge from the naval service is a matter of little concern to employers in many lines of enterprise, even where the position involves some trust and responsibility.

D. SECNAV Instruction 1620.1

1. Differences in policies and procedures between Army, Navy and Air Force Directives

Policies and procedures with respect to homosexuals and homosexual acts within the three military departments are controlled, in general, by Department of Defense Memorandum of 11 October 1949. Hence

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variations in policy and procedure within the three departments are comparatively minor, and arise primarily in areas in which the Department of Defense directive is broadly phrased or silent. Such variations as are considered to be significant for the purpose of this study are outlined below.

a. General Policy Statements. Prompt separation of true, confirmed homosexuals is mandatory in each service. The Army directive provides, however, that "Individuals who cannot be regarded as true and confirmed homosexuals, but who have been involved in a single act as a result of immaturity, curiosity, or intoxication, when the psychiatric evaluation concludes that they are not confirmed homosexuals and do not possess strong homosexual tendencies, should normally be retained in the service." The Air Force directive provides that exceptions to permit retention in the service are proper only "when the offense was committed, proposed, or attempted under the most unusual extenuating circumstances, when it is determined that the member does not have homosexual tendencies, and when the member's ability to perform military service has not been compromised. Intoxication of itself is not considered an extenuating circumstance; this is particularly true when more than one act, proposal, or attempt is involved." The Navy directive makes no such distinction as quoted above in its statement of policy, and the Navy Instruction further provides that psychiatric opinion that a homosexual offender is not a "true homosexual" is immaterial.

b. Class I Definitions. No differences, except that the Army directive provides that a child is deemed to be a person under 16.

c. Class II Definitions. No basic differences, although the phraseology varies.

d. Class III Definitions. The differences in wording here are considerable. Air Force includes one who "habitually associates with individuals known to him to be homosexuals." Air Force further provides that pre-service acts will be considered in determining whether the member has homosexual tendencies or habitually associates with persons known to him to be homosexuals. Air Force also provides that when doubt exists as to whether Class II or Class III is the appropriate label, Class II will be used. Army provides that those who "merely profess" the tendency will normally be retained in service. There may be other differences in fact, not clearly revealed by the definitions in the various directives, which can be brought to light only by careful analysis of language used in other portions of the three directives, particularly the "disposition" paragraphs. Differences in language used is so great that differences in practice are probable.

e. Disposition of Class I Cases. Navy directives provide simply for mandatory trial by general court-martial. Army and Air Force except cases involving "major mental disorders", cases wherein successful prosecution is not deemed feasible, and those wherein (Air Force only) trial is not in the best interest of the service. These exceptions are then treated as Class II cases.

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f. Disposition of Class II Cases. Each service prescribes trial by general court-martial as an alternative to discharge under other than honorable conditions. Officers are permitted to resign for the good of the service and to escape trial by court-martial in the Navy and Army; Air Force resignations are apparently tendered merely for the good of the service. Army provides for board action if trial is not feasible. So does Air Force. In unusual cases, such board referrals might result in a type of discharge higher than undesirable.

g. Disposition of Class III Cases. Treatment of this category varies all the way from retention to separation under other than honorable conditions, dependent upon a wide variety of circumstances, and condensed analysis is not feasible. The Navy directive is silent as to retention.

h. Contents of Reports. Substantially the same in each department, except that Air Force and Army require a statement that the individual has or has not availed himself of counsel. Army lists various items to be included in psychiatric study. Army requires also a waiver of board action statement when applicable, in reserve cases.

i. Level of Final Action. In Navy, final action is taken on the Departmental level. In Army, final action is taken by the major commander for enlisted cases; officer cases are finally decided in the Department. In Air Force, final action may be taken by "major air commanders," who have power to delegate final action to officers exercising general court-martial jurisdiction.

j. Board Composition. All require female and reserve representation in appropriate cases. Air Force specifies "mature" officers, preferably field grade.

k. Board Requirements. Army and Air Force reservists may waive board action in certain cases.

l. Notification to Respondent. Air Force provides a copy of regulations and a detailed letter of notification to persons about to be processed.

m. Representation before Board. Army and Air Force provide counsel, which may be waived.

2. Deficiencies in subject Instruction. In general the testimony, and study of the problem, supports the following deficiencies in the current policy and procedures with respect to handling homosexuals:

a. The classification is awkward and leads to confusion. This is especially true in the case of the Class III definitions. Without exception all the military witnesses recommended that consideration be given to eliminating this class from the directive. This confusion has been evident in medical as well as personnel administrative channels.

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It is believed, however, that while a classification is necessary for purposes of personnel administration, it is meaningless and should be ignored for medical aspects of the problem.

b. The present directive is too rigid and inflexible. The disposition of personnel alleged to be homosexual or to have engaged in homosexual acts is rigid once they have been classified. Although the directive provides for study and disposition on an individual case basis, the results of implementation show an interpretation that little discretion is allowed in the final action.

c. The current directive places a negative emphasis on clinical evaluation of the individual and seeks in the main determinations, necessary in legal cases, of knowing right from wrong and ability to follow the right. Similarly the term psychosis in the current directive has been used in its legal sense, wherein originally it was intended to be interpreted in the medical sense. Testimony shows that some attention should be paid to the psycho-neurotic aspects of the case as well as the psychotic aspects.

d. There is inadequate emphasis in the current directive upon submission and review of the considered evaluation and recommendations of the commanding officer in the case. It is believed that the commanding officer, having closely observed the individual, is in the best position to evaluate future usefulness and effect on the service and command by possible retention.

e. The present directive fails to differentiate between the true homosexual and the individual who, although he has committed an isolated act, is in fact non-homosexual and can still provide useful service to the Navy.

f. There is no provision for medical review at the Departmental level.

Recommendation:

a. That deficiencies noted above be eliminated by revisions in the present directive, as accomplished in the proposed revised directive attached hereto as enclosure (4).

E. Analyses of Navy Discharge Review Board and Board for Correction of Naval Records Instructions.

1. Current instructions.

The Navy Discharge Review Board and the Board for Correction of Naval Records have no specific instructions relative to the review of cases of persons who were separated or discharged from the naval service because of homosexual activity. Administrative regulations and procedures governing the Navy Discharge Review Board provide, in

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pertinent part: "In order to warrant a change, correction, or modification of the original document evidencing separation from the naval service, it is incumbent on the petitioner to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the original document was improper or inequitably issued under standards of naval law and discipline existing at the time of such original separation, or under such standards differing therefrom in the petitioner's favor which subsequent to his separation were made expressly retroactive to separation of the type and character had by the petitioner. The standards of naval law and discipline herein contemplated are those standards stated in statutes, regulations, bureau manuals, directives of the Department of the Navy, and other appropriate authority, together with interpretations thereof by the courts, the Attorney General, and the Judge Advocate General of the Navy." Additionally, the regulations provide that should the Discharge Review Board find in a particular case that there exist unusual circumstances which would require a retroactive application of revised discharge standards or a specific waiver of an applicable regulation in order to permit a change, correction, or modification essential to the achievement of a just and equitable result, the board may set forth the circumstances and incorporate in its decision a recommendation that the Secretary of the Navy authorize the retroactive application of revised discharge standards or of the specific waiver of the applicable regulation in question. Apart from the foregoing regulation, and the general guidance received from prior board decisions which have been approved by the Secretary of the Navy, the Discharge Review Board has no other guidance.

The regulations of the Board for Correction of Naval Records, as approved by the Secretary of Defense, provide that the function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice and to make appropriate recommendations to the Secretary of the Navy. The basic law which provided for the establishment of correction boards authorized the correction of any military or naval record where such action is necessary to correct an error or injustice, but no precise definition of error and injustice was made. In practice, determinations as to the existence or non-existence of error or injustice are based on the applicable law, regulations and policy existent at the time the alleged error or injustice occurred. The Board for Correction of Naval Records under date of 11 August 1954 received some Secretarial guidance as to the review of cases involving a punitive discharge issued pursuant to a sentence of a court-martial, but no guidance has been given relative to the review of cases involving administrative discharges. In all probability, guidance was not considered necessary as the Board for Correction of Naval Records reviews the circumstances attending the issuance of an administrative discharge only after the case has been reviewed and denied by the Discharge Review Board. Cases of persons administratively separated from the naval service because of homosexual activity comprise only a very small percentage of the cases reviewed by the Correction Board. In its review of such cases, the Correction Board has some guidance from prior board decisions which have been approved by the Secretary of the Navy.

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2. Recommended additional guidance.

In connection with its study of the instructions of the Navy Discharge Review Board and the Board for Correction of Naval Records, this Board carefully reviewed the report of 8 August 1956 of the special board convened to prepare and submit to the Secretary of the Navy proposed revised regulations and procedures for the Navy Discharge Review Board. The findings and recommendations contained in that report relative to the review of cases of persons discharged or separated from the naval service by reason of homosexual tendencies or behavior, in general are concurred in, but with modifications as will be noted below.

Inasmuch as the vast majority of cases reviewed by the Discharge Review Board and the Correction Board concern persons who were separated or discharged during or subsequent to World War II, the members and staffs of the Boards should be thoroughly familiar with the historical development of administrative procedures for the disposition of cases involving homosexuality from the pre-1940 period to the present time. In addition to determining the applicable law, regulation and policy that existed at the time the case in question was processed, and whether or not they were properly applied, each case should be decided on its individual merits.

With specific reference to cases of persons discharged pursuant to the provisions of the Secretarial letter of 1 January 1943, the Discharge Review and Correction Boards should first determine: Not "Was this the habitual behavior of the individual concerned?", but "Was the behavior of the individual representative of the habitual performance of persons actually homosexual in their inclinations?" If the homosexual behavior did not fall into the pattern of performance of persons actually homosexual, consideration should be given to the propriety of having handled the case under the directive. Additionally, in connection with the review of all cases of persons discharged or separated from the naval service because of homosexual behavior, this Board recommends that the Discharge Review and Correction Boards consider the following:

a. Is there available to the Board a contemporaneous medical or psychiatric evaluation pertinent to the homosexuality? Has a technical interpretation been provided to the Board?

b. Was the homosexual behavior a manifestation of illness?

c. Was this behavior that of an immature adolescent?

d. When did the homosexual behavior take place with reference to date of entry into the service?

e. How serious an offense was committed? What was the impact of the offense upon other individuals or the naval service as a whole?

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f. Has a credible showing been made of fraud, deception, or coercion in the proceedings which led to discharge?

g. What has been the impact of the adverse discharge on the individual subsequent to his leaving the service?

h. What would be the impact on naval discipline and administration of improving the type or character of the discharge in this and other similar cases?

The answers to these questions should provide the Discharge Review and Correction Boards with a general guide toward a fair decision in any case involving homosexuality. An approach of this sort, on an individual-case basis, is in complete accord with the following statement of policy which was contained in the earlier directives and is clearly implied in the proposed directive:

> "Each case needs careful, thorough, and individual study so that final treatment, action, or disposition will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls."

F. Summary of Recommendations:

1. General Recommendations:

a. With respect to the "one-time offender":

(1) A psychiatric evaluation should be mandatory in all active duty cases.

(2) A commanding officer's evaluation should be mandatory in all active duty cases.

(3) Class I offenders should continue normally to be tried by general court-martial.

(4) Non-Class I offenders should be grouped generally as to whether they are, or are not, true, confirmed "way of life" homosexuals.

(a) Confirmed homosexuals should be separated in all cases.

(b) Disposition of others to be based on overall evaluations by boards of officers.

(5) The type of discharge should not be inflexibly prescribed but should be based on findings and opinions of boards of officers.

b. With respect to voluntary confessions:

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(1) To encourage voluntary confessions, a person voluntarily confessing a non-repetitive isolated act under ameliorative circumstances should be:

(a) Considered for retention if psychiatric evaluation does not indicate homosexual tendencies.

(b) Separated if homosexual tendencies are present, but with the type of discharge warranted by his service record.

(2) The above policy not to apply to Class I persons.

(3) To encourage personnel to confess to homosexual tendencies, provide that if confirmed by psychiatric evaluation, and there is no evidence to indicate an attempt to evade military service, they will normally be separated with a type of discharge of no lower character than unsuitable. However, one who is determined to have been a confirmed homosexual at the time he entered the service, having knowingly failed to disclose such fact, may be discharged with an undesirable discharge.

(4) That no explicit statement or implication be made in published directives whether or not any obligation exists on the part of medical officers to make an official report concerning homosexual matters disclosed to him in confidence by a patient under treatment. Thus the present practice, whereby it is left to the sound professional judgment of the medical officer, is tacitly recognized and accepted.

c. With respect to type of discharge:

(1) That no particular type of administrative discharge be made mandatory for any particular type of homosexual or homosexual behavior.

(2) That the type of discharge should be based on the findings and opinion of a board of officers, arrived at after consideration of the service person's overall record, as well as the circumstances of the individual case.

d. With respect to treatment of so-called Class III Offender:

(1) That Class III as now defined be abolished.

(2) That individuals formerly included in Class III be processed as a(4) above.

e. With respect to clinical evaluations:

(1) That a detailed and comprehensive psychiatric examination be reported in each active duty case.

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(2) That sufficient detailed information be collected at the time of the psychiatric examination to permit continuing research on homosexuality in the naval service.

(3) That the general outline of the data to be collected at the time of psychiatric evaluation to be as follows:

(a) General background and identifying data (obtained from the service record and a questionnaire to be completed by the member concerned).

(b) Questionnaire to be completed by the examining psychiatrist.

(c) Comprehensive clinical evaluation covering the following areas:

1. A comprehensive history of the present homosexual episode.
2. A comprehensive history of homosexual behavior.
3. Description of current behavioral status.
4. Description of personality structure and type.
5. Development of family history.
6. Birth, growth and development.
7. Pre-service school and occupational history.
8. Military history.
9. Social and religious history.
10. Comprehensive sexual and marital history.
11. Attitudes.
12. Physical and neurological examination, including past medical history.
13. Mental status examination, including mental competence and sanity.
14. Summary of psychiatric examination and formulation of psychodynamics.
15. Opinions and recommendations.

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(4) That all examinations be conducted by medical officers trained in the specialty of psychiatry.

(5) That all reports of clinical evaluations be reviewed by the Chief of the Bureau of Medicine and Surgery before the case is acted upon by a disposition board. Procedures should provide for expeditious processing.

(6) That the psychiatric evaluation be given equal weight with administrative factors in determining disposition of cases involving homosexuality.

f. With respect to review procedures:

(1) Continue the present Departmental review procedures with the additional of review of the clinical evaluation and recommendations by the Chief of the Bureau of Medicine and Surgery.

(2) Furnish for the guidance of disposition boards in the Bureau of Naval Personnel and Headquarters, Marine Corps copies of the report of this Board.

g. With respect to responsibility to the civilian community:

(1) That the Chief of Naval Personnel and the Commandant of the Marine Corps shall, only in cases wherein the homosexual has been determined to be a public menace or the offense for which he was separated involved children, report the case to the Federal Bureau of Investigation through normal channels for such action as may be necessary in the public interest.

h. With respect to screening of applicants for enlistment and appointment:

(1) That no basic changes be made in screening procedures at the recruiting or training station levels; however, the present procedures should be carefully followed.

(2) That a psychiatric examination be instituted as part of the initial physical examination for regular NROTC midshipmen and for contract NROTC students prior to entering the senior division.

(3) That consideration be given to establishing a limited number of pay status billets in organized reserve units for psychiatrists and clinical psychologists as part of the Naval Reserve Program. This would permit the elimination of some of the homosexual individuals who are separated at present only after they have been ordered to active duty.

(4) Enlisted reserve personnel, not immediately ordered to extended active duty, be screened psychiatrically during the normal two weeks active duty for training period.

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(5) Additional billets be established for two psychiatrists and one clinical psychologist at the Naval Station, Newport, Rhode Island, to permit the inauguration of a formal program for screening reserve officers entering the service through the OCS Program.

i. With respect to treatment of women:

(1) That no attempt be made to differentiate between men and women in the Instruction with respect to procedures or disposition for homosexual activity.

(2) That careful review be made of all allegations concerning homosexual activity of female members of the service to ensure that a pattern representative of homosexual conduct is present, as distinguished from normal socially accepted behavior.

j. With respect to indoctrination and education of recruits on homosexuality:

(1) That the present educational program continue as the responsibility of a committee appointed by the Chief of Naval Personnel.

(2) That an effort be made to determine the effectiveness of the present educational program preliminary to instituting any change therein.

k. With respect to security implications of the homosexual:

(1) A statistical study be initiated by the Director of Naval Intelligence in coordination with the Chief of Naval Personnel and Commandant of the Marine Corps to develop factual data on the incidence of security implications in homosexual cases as well as in categories involving other types of moral turpitude and criminal activity. This study should be extended to other agencies of the government if practicable.

(2) That cases involving homosexuality continue to be handled on other than security grounds, where practicable.

l. With respect to investigative procedures:

(1) That no changes be made in procedures or methods currently employed by the Director of Naval Intelligence in investigations of homosexual offenses.

(2) That the investigative services of the Director of Naval Intelligence continue to be requested in accordance with the responsibilities assigned by the Secretary of the Navy whenever the information in the case warrants:

(3) That the facts from the investigation be made available to the psychiatrist evaluating the individual.

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m. With respect to deterrents:

(1) That provisions be retained for separating personnel for homosexual behavior by court-martial or unfavorable administrative discharge.

(2) That there be no relaxation in the broad concept that the service cannot tolerate homosexual behavior.

(3) That punishment, though varying in degree dependent upon the circumstances attendant in each case, will be meted out in cases of homosexual behavior.

(4) That the consequences of unfavorable discharges be more forcefully and frequently brought to the attention of all personnel.

n. With respect to statistical analyses:

(1) That the Chief of Naval Personnel in coordination with the Chief of the Bureau of Medicine and Surgery continue the development of a statistical basis for study of the problem of homosexuality. Factors decided upon should be susceptible to IBM card reporting, if practicable.

(2) That when completed, a trial run be conducted to determine practicability.

(3) That if the foregoing test sample is determined to be practicable, the collection and analyses of data be continued on a permanent basis.

(4) That the Army and Air Force be advised in the premises and invited to participate in order to assemble a body of statistical data for future study.

o. With respect to attitude and policies representative of society at large toward homosexuality:

(1) Maintain in great part the present service approach to the problem of homosexual behavior.

(2) Be alert to keep abreast of any widely accepted changes in the attitude of society at large toward the overall problem.

(3) The service should not move ahead of civilian society nor attempt to set substantially different standards in attitude toward or actions with respect to homosexual offenders.

2. The recommendations under paragraph 1 above, as applicable, have been substantially incorporated in the proposed revised directive

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attached hereto as enclosure (4). It is recommended that the comments of interested Bureaus and offices be obtained to the end of issuing enclosure (4) to supersede the current directive, SECNAV Instruction 1620.1.

3. It is recommended that if the report of this Board is approved, copies thereof, with particular reference to Section E, be made available to the Navy Discharge Review Board and Board for Correction of Naval Records for guidance.

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The Board having concluded its deliberations, respectfully submits herewith its opinions, findings and recommendations, this 15th day of March 1957.

S. H. CRITTENDEN, JR.
Captain, U. S. Navy
Chairman

GEORGE N. RAINES
Captain, MC, USN
Member

GEORGE A. SULLIVAN
Captain, USN
Member

C. E. HINSDALE
LTCOL, USMC
Member

CHARLES E. CURLEY
Member

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Enclosures:

(1) List of Witnesses and Summary of Testimony

(2) Bibliography of reference material

(3) Preliminary statistical studies of cases of homosexuality

(a) Preliminary Chief of Naval Personnel Study

(b) Psychiatric Unit, U. S. Naval Training Center, San Diego, Study

(4) Proposed revision of SECNAV INSTRUCTION 1620.1

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LIST OF WITNESSES AND SUMMARY OF TESTIMONY

1. In accordance with the authorization contained in the precept convening the Board, the following listed persons were invited to appear before the Board. A summary of the testimony in each case is appended hereto as indicated.

Rear Admiral Burton B. Biggs, USN — a
President, Navy Discharge Review Board

Major Hubert A. Connelly, USAF — b
Separations Branch
Under Deputy Chief of Staff (Personnel), USAF

Lieutenant Colonel R. L. Harrison, U. S. Army — c
Enlisted Separations Branch
Office of the Adjutant General, U. S. Army

Captain John E. Nardini, MC, USN — d
Chief Neuropsychiatric Service
USNH, Bethesda

Captain Martin Cooperman, MC, USN — d
Assistant Chief of Psychiatry
USNH, Bethesda

Captain S. V. Thompson, MC, USN — d
Medical Officer in Charge
Officers and Dependents Service
Neuropsychiatric Service
USNH, Bethesda

Enclosure (1)

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Colonel Albert J. Glass, MC, USA — e
Chief Psychiatry and Nuerology Consultant
Office of the Surgeon Gerneral, U. S. Army

Major Robert L. Williams, MC, USAF — e
Consultant to Surgeon General in Psychiatry and
Neurology, USAF

Dr. Manfred S. Guttmacher
Chief Medical Officer of Supreme Bench of Baltimore — f

Mr. John M. Barron — g
Supervisor, Investigative Case Categories
Office of Naval Intelligence

Mr. S. Frank Scinta — h
In Charge, Investigation Unit - sexual misconduct
offenses
Office of Naval Intelligence

Commander W. M. Bliss, USN — i
Liaison Officer to Office of Industrial Relations
Office of Naval Intelligence

Captain L. D. Wilde, (W), USN — j
Assistant Chief of Naval Personnel for Women

Colonel Julia E. Hamblet, (W), USMC — j
Director of Women Marines

Commander E. J. Sowers, (W), USN — j
Administrative Assistant
Office of Assistant Chief of Naval Personnel for Women

Lieutenant Colonel Lily H. Gridley, (W), USMC — j
Head, Legal Assistance Section
Discipline Branch, Personnel Department,
U. S. Marine Corps

Dr. Francis J. Braceland — k
President, American Psychiatric Association
Superintendent, Hartford Retreat
Hartford, Connecticut

Mr. Kimbell Johnson
Chief, Investigations Division
Civil Service Commission
(Note: Appended to Part III of this report)

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2. In addition to the foregoing, pertinent presentations and information were provided to the Board by the following listed individuals:

Captain H. S. Roberts, USN
Commander F. O. Bryce, USN
Enlisted Performance Division
Bureau of Naval Personnel

Captain G. S. Bullen, USN
Lieutenant Commander H. F. Wiley, USN
Officer Performance Division
Bureau of Naval Personnel

Colonel J. S. Twitchell, USMC
Discipline Branch
Headquarters, U. S. Marine Corps

Commander A. B. Mac Donald, USN
Lieutenant N. H. Scawthorn, USN
Recruiting Division
Bureau of Naval Personnel

Commander F. L. Garrett, (CHC), USN
Head Training Branch, Chaplains Division
Bureau of Naval Personnel

Captain John Nardini (MC), USN
Chief, Neuro-psychiatric Service
USNH, Bethesda

Commander Homer A. Walkup, USNR
Deputy Director, Officer Performance Division
Bureau of Naval Personnel

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD
CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS
BY
REAR ADMIRAL BURTON B. BIGGS, U. S. NAVY

1. Rear Admiral Biggs began his naval career at the U. S. Naval Academy in 1917. He was graduated and commissioned Ensign on June 3, 1920. Thereafter he served, variously, at sea and ashore. During the early period of World War II, he served in the Bureau of Navigation (redesignated the Bureau of Naval Personnel), first as Officer in Charge of the Officers' Records Section, and later as Director of Officer Performance Division. He was awarded the Legion of Merit for "exceptionally meritorious conduct ... successively as Appointment Officer and Director of the Officer Performance Division from the outbreak of hostilities to July 1943 ...". Other assignments included command of the provision ship USS ARCTIC, the heavy cruiser USS SAINT PAUL, Service Squadron Three, Task Force Ninety-Two and Commander Service Force, U. S. Pacific Fleet. Additionally, he served as Executive Secretary, Armed Forces Petroleum Board and Chairman, Military Advisory Board. In August 1955 he was ordered to duty as President, Navy Discharge Review Board, with additional duty as Senior Member, Naval Clemency Board, and President, Naval Retiring Review Board.

2. General opinions expressed in testimony

a. The present SECNAV INSTRUCTION 1620.1 pertaining to the disposition of cases of homosexuality involving naval personnel is too long, detailed, rigid and inclusive. The 1943 directive was more superior and workable.

b. The Navy's main objective is to get the Class I locked up and the Class II out of the service. Once that is accomplished the Navy's requirement has been served.

c. If a legal method can be established of ridding the service of these people, Classes I and II, and at the same time not putting a lifelong stigmata on them, we would be serving both the Navy and the individuals. It may be necessary to get the Department of Defense to modify its directives.

d. A relaxation or change in the present directive would not have any horrendous effect on the naval service as there is only a small percentage of individuals involved.

3. Comments on specific items of interest:

a. One-time offenders. Should court-martial or administrative discharge be mandatory in all cases, or would reassignment and retention under some form of probation better serve the Navy and the individual in certain cases?

Enclosure (1a)

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(1) Very few things should be mandatory in handling personnel. The Class I definition should be amended to include the active participant of senior grade or rank in cases where coercion is implied. With this amendment, the Class I definition and the Class I action should remain mandatory. The persons falling in the Class I category are a social menace and should be isolated.

(2) The commanding officer should be allowed considerable latitude in processing one-time offender cases. Discharge of the one-time offender should be given more freedom and allowed to retain the individual in certain cases.

b. Voluntary confessions. Do our present methods of handling the man who, without fear of subsequent disclosure, admits participation in a homosexual act, help or hinder the stamping out of homosexuality in the Navy?

(1) In the majority of cases voluntary confessions do not help or hinder the stamping out of homosexuality as the person who confesses is going to get discharged anyway. In borderline cases voluntary confessions might help to stamp out homosexuality.

c. Type of discharge. Do our rules on type of administrative discharge have a deterrent effect? To what extent do they inhibit eventual rehabilitation? Can they be liberalized in appropriate cases without disrupting discipline?

(1) Any deterrent is a matter of degree, and it is almost impossible to evaluate. However, our present rules might have a deterrent effect in some cases. But the present rules might also deter getting rid of the habitual practitioner (the one time passive offender, fearing discharge himself, will not report the habitual offender).

(2) Our present type discharge has a great tendency to inhibit eventual rehabilitation. Our rules can be liberalized in appropriate cases without disrupting discipline.

(3) Rather than an ONI investigation, or prior to such an investigation, in some cases it might be better to have trained personnel men (chief petty officers) interview persons suspected of homosexuality. The psychiatric examination should not be given after a person has been interrogated for hours as, by that time, he is a disturbed person. And the psychiatrist should examine the person at least twice.

d. Treatment of so-called "Class III offender." Are our current procedures sound in the light of present-day knowledge?

(1) The Class III offender should never have happened. The only place for a Class III category is a pre-induction or a pre-enlistment survey. The commanding officer should have a certain amount of latitude in connection with the disposition to be taken, and we have

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gone overboard trying to cover every situation in the instruction. More onus should be placed on the commanding officer, and the instruction should be less involved.

(2) The commanding officer has no exit under the present instruction to exercise much discretion of any sort.

(3) If there is one isolated incident long before a person entered the service, with no repetition that can be shown or no service act that can be shown, that is the Class III that should be eliminated from the instruction as there is no established pattern.

e. Clinical evaluations. Do current reports on individuals under consideration for disposition as homosexuals provide adequate information on which to base a sound decision? If not, can they be improved, and how?

(1) Numerous psychiatric reports are not clear even to a reviewing psychiatrist. Trained chiefs and first class personnel men should first interview the person suspected of engaging in homosexuality. Reports by such personnel men are readable and sound and contain more information as the interview is conducted on an informal basis. With such a report, the psychiatrist is in a better position to express an opinion. The psychiatrist should examine the person before the investigator scares him to death.

(2) The clinical estimate should state whether there is an established pattern.

f. Review procedures. Are they appropriate? Should a psychiatrist be added to the membership of Department review boards in all or certain cases?

(1) Notwithstanding a shortage of psychiatrists in the Navy, an opinion should be obtained from a psychiatrist in each of these cases. The senior member of discharge boards in the Bureau of Naval Personnel and Headquarters, Marine Corps should ascertain that there are no unanswered questions relative to psychiatric or clinical evaluations. If interviews are conducted by trained personnel men and psychiatrists submit more complete reports there will not be so much need for further advisory opinion at the review level.

g. Responsibility to the civilian community. What is the responsibility of the Navy, if any, to the community when discharging an habitual homosexual without punishment, treatment or identification as such?

(1) The Navy has no responsibility to the civilian community in this matter. Class I cases, discharged by reason of general court-martial are recorded with the Federal Bureau of Investigation and the fingerprints and details are available to police departments if needed. The Navy is precluded from placing derogatory information on separation documents.

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h. Screening of applicants for enlistment. Should screening procedures at Recruiting Stations be modified in a more intensified effort to preclude taking into the Navy potential homosexuals?

(1) The percentage of homosexuals in the Navy is not sufficient to justify assigning additional psychiatric help and other personnel to recruiting stations. Psychiatrists are not able to detect homosexuals from a preliminary screening process. Inasmuch as, with the exception of reserves, all applicants are not screened by psychiatrists, psychologists and personnel men, nothing could be added to the screening process that would "pay its way".

i. Should women be treated differently than men?

(1) No, women should be treated the same. Information obtained from psychiatrists indicates that the percentage of Class I offenders in the female is considerably higher than in the male. But present policy precludes incarcerating the female, and legal procedures consume a long period of time.

j. SECNAV INSTRUCTION 1620.1. Should it be revised to reflect recommendations in the areas outlined above?

(1) The present SECNAV Instruction 1620.1 is too long, detailed, rigid and inclusive. The 1943 directive was more superior and workable. The BUPERS instruction of 1953, the educational memorandum, is even more criminologically tainted than the SECNAV Instruction.

(2) The objection to the existing directive is that it has entirely too much guidance in it. Too much detail, it goes too far. If we accept the premise that we are trying to rid the Navy of the two principal classes and handle the rest on a command and administrative basis, then there is too much in the directive.

(3) The first sentence of paragraph three of the present instruction should be deleted, to wit:

(4) Homosexuality within the naval service is primarily a military problem.

(5) Paragraph three should be changed to reflect the corrective influence on other naval personnel in lieu of the corrective influence on the individual himself.

(6) The last sentence of paragraph three should be underscored, namely: Each case needs careful, thorough, and individual study so that final treatment, action, or disposition will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls.

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(7) The definition of the Class I offender as contained in paragraph five (a) should be changed to include the active participant of senior grade or rank in cases where coercion is implied, to wit: Class I is defined as those cases accompanied by assault or coercion or where the relevant rank of the active participant implies coercion, as characterized by an act in or to which the other person involved did not willingly cooperate or consent etc.

(8) The Class III category should be striken from the instruction. In such cases the commanding officer should be granted more discretion.

(9) The Class II definition is too broad.

(10) The Class II definition should be changed to read "acts representing the habitual performance".

(11) The words "one or more" and the word "proposals" should be deleted.

k. Administrative practices. What practices not covered in SECNAV Instruction 1620.1 should be changed? Are instructions to NDRB and BCNR adequate? What further Secretarial guidance, if any, is needed?

(1) At the present time, there are no instructions to the Discharge Review Board and the Board for Correction of Naval Records other than those contained in basic directives. If it is admitted that a lot of activity under the guise of the Class III category has been wrong, the Secretary should authorize the Discharge Review Board to make it retroactive.

4. Recommendations

a. Change the present SECNAV Instruction and make it shorter, less detailed and less rigid, and allow the commanding officer to use more discretion in processing cases.

b. Change the present SECNAV Instruction as follows: Paragraph 3. Background. Delete first sentence which reads: "Homosexuality within the naval service is primarily a military problem." Delete the first word of the second sentence: "However,". Have the first sentence begin as follows: Insofar as the individual is concerned etc. In the fifth last line of paragraph 3 delete the words "the individual himself" and in lieu thereof insert "other naval personnel". Underscore the last sentence of paragraph 3.

c. Modify the definition of Class I on page 3, paragraph 5a. As modified it should read as follows: Class I is defined as those cases accompanied by assault or coercion, or where the relevant rank of the active participant implies coercion, as characterized by an act etc.

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d. Modify the definition of Class II on page 3, paragraph 5b. The words: "acts representing the habitual performance" should be added. Delete the words "one or more" and "proposal".

e. The Class III category should be deleted.

f. The commanding officer should be allowed more latitude in processing one-time offender cases, and discharge should not be mandatory.

g. Trained personnel men should examine the person suspected of homosexuality in order that the psychiatrist may have a more complete report at the time of examination. The psychiatrist should make at least two examinations.

h. Psychiatric reports should be more complete and should state whether or not there is an established pattern.

i. Secretarial guidance should be given to the Navy Discharge Review Board and the Board for Correction of Naval Records in connection with the review of cases involving homosexuality.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY

MAJOR HUBERT A. CONNELLY, U.S.A.F.

1. Major Connelly is attached to Separations Branch, Promotions and Separations Division, Director of Military Personnel, Deputy Chief of Staff (Personnel), USAF.

2. General opinions expressed in testimony

a. "Cases involving immaturity and professed intoxication require careful study and evaluation. Evidence of one or two teen-age acts may imply only youthful curiousity or can be a positive identification of homosexual tendencies. When only youthful curiousity is involved, with no indication of an established pattern of homosexuality, closing the case without further action is proper unless the individual's ability to perform service has been compromised to the extent that separation for the convenience of the government is indicated. Intoxication has grown to be one of the most common excuses presented by personnel confronted with evidence of homosexual acts or tendencies. To accept such explanations cannot alter the fact that such actions have undoubtedly compromised the member's ability to continue to perform military service. More than one such incident not only confirms the above but permits positive classification under AFR 35-66." (This quote not identical to language of directive).

b. "If an officer is a homo, he's processed as a homo... We tell him if he doesn't resign the next step is to forward the facts to his major commander or the commander exercising general court martial authority..." (This is being adopted in AF).

c. "Class II. Court martial enters into it only for officers, in which after they are given a chance to resign, if they don't resign they must be considered for court martial."

d. "Class II in 98% of the cases is an undesirable discharge, other than honorable. We have extended Class II and given boards--under very unusual conditions, only when unusual extenuating circumstances permit--the right to give a general or even an honorable under Class II. .... I haven't seen one yet." (98% applies to waiver-of-board cases)

e. "On Class III... "If you haven't committed any acts in the service, if we haven't anything against you, if you identify yourself the worst you will get is a general discharge." In certain cases you can get an honorable--very rare."

Enclosure (1b)

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f. Suspect has right to counsel before field board. Suspect must sign statement that such counsel was available, and that he did or did not use same.

g. Witnesses permitted if available and testimony material.

h. Class II Board cases: 90% go out as UD, 10% general due to unusual circumstances.

i. One-time in service offenders still under Class II; pre-service young teenagers who commit an act while such may be exempted from such processing.

j. Character Guidance Lecture—covers homosexuality by name only—ineffective. No basic training lecture—don't want to emphasize the negative factors of service.

k. No provision for reassignment on probation as far as a homo is concerned—we will not consider it. ("immaturity and youthful offender "category excepted—they may be retained).

l. In Class II cases no consideration given to service record of suspect; in Class III service record is considered.

3. Comments on Specific Items of Interest:

a. One time offenders: See comments above. Pre-service adolescent conduct may warrant retention without processing; In service offenders processed as Class II.

b. Voluntary confessions: investigated before counsel offered.

c. Type discharge: See comments above. 98% of Class II board-waivers get UD; 90% of Class II board actions get UD. Class III's get general or honorable.

d. Class III offender: See comments above.

e. Clinical evaluations: psychiatrist in field, if practicable. Psychiatrist optional on boards.

f. Review procedures: final action—by board of field officers—at major command level or, when delegated, to GCM commander.

g. Responsibility to community: Referred to doctor.

h. Screening of Applicants: If homo caught in 1st 3 weeks, and falsified entry form, he gets discharge as fraudulent enlistee. (Not all recruits get psycho screening).

i. Women vs. men: treat the same.

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BRIEF OF TESTIMONY BEFORE THE SECRETARY OF THE NAVY BOARD CONCERNING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY

Lieutenant Colonel R. L. Harrison, U. S. Army

1. Lieutenant Colonel Harrison is Chief, Enlisted Section, Separations Branch, Personnel Division, Office of the Adjutant General, U. S. Army.

2. General Opinions Expressed in Testimony:

a. Control decentralized to the six overseas Army commanders since 1955.

b. "The true, confirmed, or habitual homosexual personnel, regardless of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory."

c. We try to provide a deterrent, but have been absolutely unsuccessful.

d. "Individuals who cannot be regarded as true and confirmed homosexuals, but who have been involved in a single act as a result of immaturity, curiosity, or intoxication - and he would not have to be a minor in this case; he could be 90 years old - when the psychiatric evaluation concludes that they are not confirmed homosexuals and do not possess strong homosexual tendencies, are normally retained in the service."

e. Class II includes I's as to whom JA says no case.

f. Class II includes "self-admitteds" also.

g. Class II's normally separated as UD, unless suspect resists, in which case CM; if CM not feasible, board action.

h. Board in Pentagon for officer cases.

i. Class II's get UD; if goes to board, can get a general.

j. Consideration being given to putting homo reg with unsuit and unfit reg - all in one.

k. Class III's. Individuals who merely profess homosexual tendencies are normally retained in service. It is essential to distinguish between those who have uncontrollable, perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Disposition action is taken as in the case of Class II personnel, except for trial by GCM. Class III officer personnel receive either a general or honorable discharge. Class III enlisted are given a general or UD as determined by major commander. In exceptional cases, where an individual admitted homosexual tendencies at the time of induction and was nevertheless inducted, or where an individual performed outstanding or

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heroic military service, an honorable discharge may be furnished." (If retained, transfer is customary.) If discharged, reduction to E-1 is automatic first - this is a questionable deterrent, however.

1. No difference in treatment of officers and enlisted, other than procedure, and the same for men as women.

Note: New Army directive is in process. It may contain more decentralization, more consideration of type of service when type of discharge is being considered, trend toward more leniency, etc.; but all of these points are still in substantial doubt. It would be misleading to list them in detail.

3. Comments on specific items of interest:

a. One time offenders: See above comments. If result of immaturity, curiosity or intoxication, if psychiatric exam supports, may be retained.

b. Voluntary confessions: Not covered.

c. Type discharge: See above comments: Class II's normally get UD.

d. Class III offender: Consideration being given to processing out as fraudulent enlistee, the homo who denied such on his entry forms. Difficulty is that this will discourage this category from coming forward and admitting the tendency.

e. Clinical evaluations. Boards must consider a psychiatric evaluation.

f. Review Procedures. Further decentralization beyond Army commands is being considered.

g. Responsibility to Community: (citing Olive case) Notifying local authorities is "without meaning". May be notified of info in file upon request by law enforcement agencies. FBI notified of Federal crimes. Known dangerous individuals normally transferred to VA, hospital or prison. Disease bearers reported to appropriate state health department.

h. Screening of Applicants. (May be Army Talks for recruits on this subject, not certain. (See above on fraudulent enlistment.)

i. Women vs Men. Treat same.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY CAPTAIN J. E. NARDINI, MC, USN; CAPTAIN M. COOPERMAN, MC, USN: and CAPTAIN S. V. THOMPSON, MC, USN, on 17 & 24 JANUARY, 1957

1. Important biographical data and experience of witnesses:

Captain John E. Nardini, MC, USN
Served as a Destroyer Division M.O. and as Battalion Surgeon, 4th Regiment Marine Hospital, Shanghai.
POW of Japanese April 1942 - September 1945.
Executive Officer, Navy Medical Unit, USPHS Hospital, Fort Worth, Texas, 1946-1947.
Chief Neuropsychiatric Service, USNH, Chelsea, Mass. 1952-1953; USNH, San Diego, Calif., 1953-1954; USNH, Bethesda, Md., 1954-present.
Acting Chief Psychiatric Branch, Professional Division, BUMED, January - September 1955.
Certified as a specialist in Neurology and Psychiatry.

Captain Martin Cooperman, MC, USN
Completed training and served as a flight surgeon aboard two carriers during WW II.
Also served as a destroyer medical officer.
Senior Psychiatrist, U.S. Naval Dispensary, Navy Dept., 1952-1955.
Medical Member, Navy Clemency Board, 1952-present.
Ass't Chief of Psychiatry, USNH, Phila., Pa., 1951; USNH, Bethesda, Md., 1955-present.
Certified as a specialist in Psychiatry.

Captain S. V. Thompson, MC, USN
Served aboard the USS Leedstown until ship sunk in action 1944.
Chief of Psychiatric Research, NMRI, National Naval Medical Center, Bethesda, Md., and additional duty, BUMED, 1951-1953.
Chief of Neuropsychiatric Service, USNH, Portsmouth, Va., 1946; USNH, Yokosuka, 1953-1956.
Medical Officer in Charge, Officers and Dependents Service, Neuropsychiatric Service, USNH, Bethesda, Md., 1956-present.
Certified as a specialist in Psychiatry and in Psychoanalysis.

2. General Opinions Expressed in Testimony

a. There have been no major discoveries on the problem of homosexuality during the past 10 years. Rather, there has been improved understanding and a change in attitudes based on re-evaluation of previously known facts. Further, there have been marked advances in the treatment of persons with homosexual symptoms.

b. Homosexual behavior occurs in all personality classifications. Given adequate health conditions (proper food, rest, etc.) and prolonged isolation from women, homosexuality can develop in people not ordinarily

Enclosure (1d)

89

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considered susceptible. Such behavior is generally transient and disappears when the individual once again is returned to a normal heterosexual environment. Thus, homosexual activity is a symptom, not a disease, not a person, not a type of anything. It is a symptom of an individual way of relating to life, people, the world, to himself, and the meaning of the symptom varies tremendously. Therefore, it appears that the basic problem is not such things as the one-time or two-time offender, or habitual (whatever this term means); but the basic problem is "What is the matter with the individual — what is this a symptom of". In disposition, primary consideration should be given to the psychiatric condition, if any, underlying the behavior.

c. There is a greater cultural acceptance of homosexuality now than there has been in the past. People discuss it openly. However, actual published information as to the prevalence of homosexuality was not generally available prior to the Kinsey study.

d. Psychiatrists have been more lenient in the area of dealing with homosexuality than the legal authorities, primarily because they have long been aware of the prevalence of homosexual behavior. The doctor, by orientation, probably ultimately in the best interests of society, tends to lean towards the individual. This does not mean that the physician is unaware of legal, cultural, moral, and ethical values involved in homosexuality. However, these problems are viewed as administrative rather than medical.

e. Psychiatric examination would be the best place to gather statistics which would be meaningful in evaluating homosexuality in the service.

f. A total of 267 men were examined in connection with investigations for homosexuality during a 33 month period at USNH, Yokosuka. Seven percent of this group were so psychotic or severely neurotic that it was necessary to evacuate them to the United States. Over half of this latter group was considered to be mentally ill by the field investigators prior to their being seen by the medical department. Actually, some of the psychotics had not engaged in homosexual activity but had acknowledged participation as part of a delusional system or hallucinations. Twenty percent of the group were one-time offenders. Thirty percent of the group were primarily heterosexual but engaged in occasional homosexual activity. Eighteen percent of the group became involved in homosexual activity when under the influence of alcohol.

g. In recommending clemency in the case of members confined to retraining commands, any incidental suggestion of a homosexual incident at any time in the past, regardless of the significance of the incident, almost automatically precludes favorable action on the case.

h. It is felt that very few career officers with over three years service become involved in homosexual affairs, and current administrative procedures for handling of the habitual officer offender seem adequate. Any sexual act with a minor is considered assault. The use of rank or the implication of rank by officers to make homosexual conquests approaches assault.

i. All cases involving assault should be handled by court-martial just as assaults in other cases.

3. Comments on Specific Items of Interest

a. One-time offenders: The present directive does not permit a distinction between the habitual and one-time offender, and this makes the job of the psychiatrist both extremely difficult and frustrating. Army regulations permit the retention of the one-time offender who is involved in homosexuality on the basis of immaturity, alcohol, etc., providing the individual is considered capable of further useful service. An individual should not automatically be discharged because he has engaged in one or two homosexual acts. On a statistical basis, it is impossible to say how many homosexual acts an individual will become engaged in before this becomes an habitual form of behavior.

b. Voluntary confessions: In the absence of privileged communication in the Navy and under the present directive, it is felt that many people who would seek medical help for this problem are deterred. Most people who would make voluntary confessions will not do so because of the possibility of subsequent punishment. The confession of the one-time offender should be handled differently than for the habitual offender. Voluntary confessions frequently involve many people, who may or may not have been actually engaged in homosexual activity, i.e., with a group in which certain parties committed offenses.

c. Type of discharge: The discharge procedure presently utilized can stigmatize a man for life because of a single act. An undesirable discharge seems a disproportionate amount of stigma in later life for an individual who has engaged in only one homosexual act, particularly if the person was under the influence of alcohol, or if his behavior was symptomatic of adolescent experimentation and immaturity. The mandatory undesirable discharge deters a person, who might be aided, from seeking psychiatric help. These people subsequently may become disciplinary offenders (going AWOL to get away from the threat) or they may develop a major mental illness. Homosexuality, along with absence, theft, and alcohol offenses, is generally considered indicative of personality disturbances, but these are merely symptoms. In considering disposition, the primary emphasis should be placed on effecting the disposition of the individual and not on disposing of a specific act. The discharge should not be automatic once the act is proven. In cases where other symptoms are involved, members with personality disorders appear before a board of medical survey and those with psychotic or neurotic illnesses appear before a clinical board and physical evaluation

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board. The present system of awarding undesirable discharges has little or no deterrent effect. It is felt that liberalizing the type of administrative discharge in certain cases would not serve to encourage homosexuality, nor would it disrupt discipline. The type of discharge should be determined on the basis of the individual's total performance, not on the basis of symptomatic behavior.

d. Treatment of the so-called "Class III" offender: The category of Class III offender is completely unusable and unworkable from a medical standpoint. Strict adherence to the Class III category would probably result in separation of 30 percent of members presently in the military service. The current Class III category does not reflect present day psychiatric knowledge about the handling and treatment of non-psychotic, non-habitual homosexual offenders. Many men who can make a positive contribution to the service are being separated today. In addition, these men are severely handicapped in their future life as civilians. Psychiatrists are placed in a position of approaching chronic prevarication in that they tend to categorize and handle Class III homosexual activity as symptomatic of other psychiatric conditions.

e. Clinical evaluations: Current reports on suspected homosexuals do not, in many cases, offer much help in making sound decisions. Inequality in professional experience of the psychiatrist, the difficulty in getting a man under investigation to talk freely (because of self-incrimination), and the fact that the psychiatrist knows the case is considered to be an administrative and not a medical matter contribute to this. Clinical evaluations are presently conducted by medical officers with largely varying degrees of training in psychiatry and in Naval administrative procedures. This produces a great deal of confusion. Inexperienced Reserve officers tend to minimize the importance of homosexual activity in keeping with their civilian attitudes. In the present clinical evaluations, there are two things the psychiatrist may do: (1) determine whether or not the man is psycotic; (2) determine whether or not he is malingering. To require all persons suspected of homosexuality to be hospitalized would be impractical in terms of the current number of professional personnel in hospitals, and would be undesirable from a psychiatric viewpoint. Psychiatrists should have the benefit of an CNI investigative report before the individual is examined. Navy psychiatric facilities are currently staffed so as to be able, in most cases, to do adequate psychiatric and psychological studies. In those cases where it is not possible to deal adequately with the individual on an out-patient basis, he should be transferred to a hospital for a more thorough study. Emphasis in these studies should be concentrated on the non-habitual offender and the psychiatrically ill. Physicians and psychiatrists, in order to function effectively, cannot pass moral judgment on an act or the symptoms the person presents.

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f. Review procedures: A psychiatrist or officer with specialized training should be added to the membership of the Department Review Boards to aid in the evaluation of all cases of homosexuality. If the non-habitual offender is dealt with medically, field reports can be channelled through BUMED for review before reaching BuPers or MarCorps, as is done in the case of a medical survey or clinical board report. It is not anticipated that such action would produce a backlog in BUMED. The question of whether the psychiatrist should see the man before ONI at the local level needs further study.

g. Responsibility to the civilian community: When a man receives a UD for homosexuality, he finds return to civil life very difficult. In those cases where it is felt that treatment would be helpful, but that the man nevertheless should be discharged, he should be prepared to seek civilian psychiatric help. The Navy should not notify the community or civil authorities that a man is being discharged for homosexuality.

h. Screening of applicants for enlistment: Modification of screening procedures at the recruiting level is not indicated. Detection of homosexuals is a difficult problem, since homosexuality is not, in and of itself, a disease entity, but a symptom of another disorder. Thus, it is not possible to screen out all homosexuals or those who are going to definitely participated in homosexual activity at some time in the future, on the enlistment level. Again, it is difficult to get meaningful information from the homosexual, since disclosure of such information results in self-incrimination under the current directive. Ideally, any proposed research should include all recruits and all dischargees, not just those whose homosexuality is detected. It takes extensive psychiatric and psychological examination for the identification of individuals who may become overt homosexuals.

i. Should women be treated differently from men? The percentage of female Naval personnel processed for homosexuality is higher than for male personnel, probably because of the intensity with which such investigations are pushed. Again the Navy loses because the problem is attacked without consideration of the medical point of view. Homosexual activity in women is more diffuse than in men, and therefore, more easily suspected. However, it is extremely difficult to define homosexual behavior among women. It is quite possible for a woman to be involved in a homosexual affair without knowing it, although this is not found in the case of men. Actual genital activity in women is far more rare than in men. There is no reason to believe that women should be treated differently from men.

j. SecNavInst. 1620.1: This Instruction is considered to be inadequate from a medical viewpoint. It is difficult to reconcile the legal terminology and categorizations used in disposition with our medical knowledge of homosexuality. The present SECNAV Instruction places the medical officer in the position of either failing to administer medical services when indicated, or violating a specific administrative directive.

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Many individuals with homosexual anxieties, which could be successfully resolved by psychiatrists, are unnecessarily lost to the services because of the present directive. The need is not so much to change the present directive as to completely rewrite it so as to reflect the points made above and in the section on recommendations below. The present concepts of Classes I, II, and III should be entirely discarded.

k. Administrative practices: Under the present directive, the maximum contribution of psychiatrists is not being obtained, since the problem is considered administratively and not medically at a dispositional level. In evaluating persons involved in homosexual activity, it is desirable that the individual be seen by a board of psychiatrists. The report of this board would be forwarded through channels as a letter reporting a psychiatric evaluation, rather than as a board of medical survey when a survey is not normally indicated. In those cases where a psychiatric diagnosis is established, the procedure to be followed should be in accordance with existing directives for handling psychiatric patients. However, it is considered that all reports of psychiatric examination of homosexuals should be reviewed in BUMED prior to being acted upon by disposition boards in BuPers and MarCorps. This will insure the psychiatric aspects of the case are clearly resolved prior to action by the disposition board. Individual disposition should be made on the basis of the man's psychiatric condition and his total performance in the service. Whether the disposition board would want to equate one homosexual act with a special court martial would be a matter of internal mechanics. This would get away from an impossible word to define, namely, "habitual homosexuality". The handling of homosexuals with diagnosable psychiatric disorders through medical channels probably would not materially add to the number of PE board cases now being processed. Officers and enlisted men should be dealt with in the same manner, although they are probably handled somewhat differently today.

4. Recommendations:

a. Rewrite the current directive to accomplish the following:

(1) Discard the concept of Class I, II, and III homosexual offenses, and evaluate each case as to whether the man is:

(a) An incipient or overt psychotic. These cases should be handled through normal medical channels.

(b) Suffering from a neurosis. These cases, after hospitalization and treatment:

1. Should be returned to duty, or

2. if treatment in the Navy could not effect his return to duty, the individual should be given some type of non-disciplinary discharge.

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3. Appear before a PE Board if necessary, and without prejudice.

(c) An habitual offender. In these cases the man should be discharged and proposed administrative procedures are adequate for this.

(d) Homosexual assault should be handled as it is now by court-martial procedure.

(2) Remove the present automatic UD for homosexual offenses and separate the member with the type discharge his service record warrants.

(3) Consider the possibility of retaining certain non-habitual offenders, with some type of action rather than discharge. This would not preclude disciplinary action.

(4) No change should be made in procedures for screening of applicants for enlistment.

(5) All psychiatric evaluations in cases involving homosexuality should be reviewed by BUMED prior to transmittal to BUPERS and MARCORPS.

(6) A psychiatrist should be added to the membership of the Departmental Review Boards.

(7) No distinction should be made in the handling of cases involving women.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY COLONEL ALBERT GLASS, MC, U. S. ARMY AND MAJOR ROBERT L. WILLIAMS, MC, U. S. AIR FORCE ON 18 JANUARY 1957

1. Important biographical data and experience of witnesses:

GLASS, Albert J., Colonel, MC, USA

Chief, NP Service, Oliver General Hosp., 1947-1948; letterman Gen. Hosp., Feb 1948-Sept 1950; Med. Field Service Shc. and Brooke Army Hospital, Aug 1952-June 1954; Walter Reed Army Hospital, Jan-Sept 1956.
Chief, NP Consultant to the Far East Command, Oct 1950-Oct 1951.
Deputy Director, Div. of Neuropsychiatry, Walter Reed Army Institute of Research, July 1954-Jan 1956.
Presently Chief Psychiatry and Neurology Consultant, Professional Division, Office of the Surgeon General, Department of the Army.
Certified as a specialist in Psychiatry and Neurology.

WILLIAMS, Robert L., Major, MC, USAF

Chief of Departments of Psychiatry & Neurology, Lakeland Air Force Base Hospital, San Antonio, Texas, 1952-1955.
Consultant to Surgeon General, USAF in Psychiatry & Neurology, 1955 - Present.
Certified as a specialist in Psychiatry & Neurology 1952.
Alternate for Dr. Frank Berry, Ass't Secretary of Defense for Medical Affairs on two councils:
(1) National Advisory Mental Health Council
(2) National Advisory Neurological Diseases & Blindness Council

2. General opinions expressed in testimony:

The representatives of the Army and Air Force individually presented the problems confronting their respective services in the disposition and processing of homosexuals, and those who commit homosexual acts. The problems related to the processing of homosexuals in each of these services are very similar. Therefore, in most cases, the testimony has been combined in this abstract.

One of the foremost problems in both services, from the medical viewpoint, is the lack of distinction in the administrative handling of an overt, confirmed homosexual and those who commit a homosexual act. The regulations have no flexibility and do not permit the review boards any flexibility in distinguishing between an overt, confirmed homosexual and those individuals who commit an occasional homosexual act. The main interest of the review board is the question of whether the individual whose case they are reviewing did or did not participate in homosexual activity. If the answer is affirmative, the method of processing, both for a confirmed, overt homosexual and those whose activity may be a one-time affair or at best an occasional episode are the same in that they both receive a punitive discharge.

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In order to distinguish between the overt, confirmed homosexuals and those who commit a homosexual act, Colonel Glass offered the following definitions: He suggests that a homosexual be defined as one who demonstrates by behavior a repeated or exclusive preference for sexual activity with the same sex and suggests that the following definition of homosexual acts be considered; that is, any bodily contact between persons of the same sex, activity undertaken or passively permitted with the intent of obtaining sexual gratification, or any proposal, solicitation, or attempt to perform such an act.

Homosexuality is a part of the total behavior of the individual and our basic interest should be in whether the individual is suitable and usable for our purposes rather than the attempt to determine to any amount or any quantity the degree of homosexual tendencies. It was considered particularly urgent to distinguish between the overt, confirmed homosexual and those who commit a homosexual act. The true, overt, confirmed homosexual did not present a problem in that there was no question that he was unsuitable for service. Although it was felt that he should be discharged, the type discharge should be contingent upon his previous service.

Many states are now in the process of revising the state laws regarding sexual crimes. In most states and in most municipalities when the situation of overt homosexual activity between two adults arises without public outrate, the case is handled in very low court, usually by the Justice of the Peace or Police Court. When individuals are booked in such cases, it is on charges other than homosexuality activity.

A brief discussion was held on some of the religious groups feelings towards the problem of homosexuality. The Anglican Church was specifically mentioned in that they have proposed that homosexuality between two adults be considered in the same light as heterosexual behavior between two adults. When there is public outrage, it is considered a crime; but without outrage, it is only a sin in the eyes of the Church.

It is considered that homosexuals are no more of a security risk, and in many cases much less of a security risk, than alcoholics and those people with marked feelings of inferiority who must brag of their knowledge of secret information and disclose this information to gain stature.

In support of the contention that people who have shown some homosexual tendencies have been able to more than adequately satisfy their service obligations, reference is made to the Fry Project, in which 183 individuals with homosexual problems all along the continuum were examined for induction. Of these 183, 51 were rejected at the induction station; 29% of these rejects were for neuropsychiatric reasons; of the 132 who were permitted to enter the service, 118 served honorably for a period of one to five years; only 14 were discharged. It was interesting to note that 58% of these people attained officer rank and gave creditable

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service. However, in the case of overt, confirmed homosexuals, Colonel Glass cited an Army study in which 75 overt homosexuals were retained in the service. All were followed at least a year and some a little more than a year. Of these 75 individuals, 44% were retained in the service at the end of this year, 23% had received an honorable discharge, 23% a general discharge, and 7% an undesirable discharge. One individual died as a result of combat wounds. Of the 44% retained in service, 11 of these who were retained were promoted; 17 had served overseas in some combat; one had been promoted and demoted, and two were AWOL. In summary, 48% made a fair service adjustment, 7% were of doubtful value, and 45% proved to be a definite liability. No attempt was made to determine if this group possessed other personality defects or characteristics which would render them unsuitable. In comparing this group with the average inductees, it was found that 90% of the inductees are expected to give creditable service.

3. Comments on specific items of interest.

a. One-time offenders. This situation has created many diverse problems in each of the services; particularly in the case of the one-time or occasional offenders as distinguished from the overt, confirmed homosexual. The review boards in disposing of cases before them do not take into consideration the individual's previous military record nor his potential value to the military service. In all cases, despite a more than adequate previous military service and despite great potential value to the service, the individual is given a punitive discharge exactly like one who throughout his military service has been worthless. In some cases there have been elaborate methods evolved to circumvent the current regulations regarding the disposition of homosexuals.

b. Voluntary confessions. The Surgeon General of the Army believes "that the procedure of preparing charges, confronting the accused with them, and offering alternatives as in Section II, Paragraph 7 is intolerable ethically. This procedure violates all good taste, the rights of the accused and seems to fall under the use of coercion, unlawful influence and unlawful inducement in obtaining a confession or admission. In Paragraph 140a, Manual for Courts-Martial, United States, 1951, page 249, 'coercion' is in part defined by the following statement believed to be applicable: 'Promises of substantial reward or benefit, or threats of substantial disadvantage, likely to induce a confession or admission from the particular accused.' Similarly Paragraph 140A, page 179, of the United States Army 1954 Pocket Part to the Manual for Courts-Martial, United States, 1951, indicates that confession must be of a 'will not encumbered or burdened by threats, promises, inducements or physical or mental abuse.'"

It was the considered opinion of the witnesses that such procedures hinder the stamping out of homosexuality in that it tends to thrive underground and makes it difficult or impossible for people to seek psychiatric treatment for problems in this area.

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Penalization of an individual, who discloses information on homosexuality during the process of an investigation for some entirely different matter, is also a problem of concern. These instances usually occur during the process of a security investigation, in which the participant is assured that anything said will be held in strictest confidence and in no way reflect on the individual. However, immediately upon hearing of any homosexual act, regardless of whether it was a one-time occurrence or not, the individual is handled exactly the same as if he had been apprehended in the act and upon investigation was revealed to be a confirmed, overt homosexual. This not only does a gross injustice to the individual, but also results in the services losing many valuable people.

c. Type of Discharge. It was noted by Major Williams that, in one of the Air Force activities, a plan was developed whereby homosexuals would receive an administrative discharge in accordance with Article 3916, Air Force Regulations, as inapt and unsuitable and would be labeled as a case of sexual confusion rather than an undesirable discharge.

In other areas it has been noted that individuals who are having problems with homosexual conflicts were seeking the aid of civilian psychiatrists because of the threat of a punitive discharge. The rigidity of the regulations has also caused the psychiatric evaluation to be restricted to only a statement as to the man's mental competency and to categorize him.

A gross injustice is done to the individual by giving him a punitive discharge. It is considered that this is an inordinate penalty to pay inasmuch as in our present-day culture all individuals have been expected to have military service. Upon application for employment, or in other situations, a statement is desired regarding the military service along with a request that the discharge certificate be produced. In instances where individuals have been given an undesirable discharge because of homosexuality, this has stigmatized the individual to the extent that he is unable to make adjustments to the civilian community. In addition to being unable to make the adjustment in his own community, this stigma follows him no matter where he goes.

The punitive discharge is a deterrent to any therapeutic attempts because (1) the individual is afraid to mention any evidences of sexual confusion or homosexual conflict and (2) when he does, the therapy is then carried on in the light that "if you do not show up for your appointment, you will receive an undesirable discharge."

d. Treatment of so-called Class III offender. The Class III offender is a legal thing and not a psychiatric classification. The Class III offender might be a confirmed homosexual, then again may be just an individual who is sexually confused. The Class III group should be

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handled individually; and if it is determined through examination that the individual is a true overt, homosexual, he be discharged with the type of discharge the service record warrants. If he is not a confirmed homosexual, his disposition be left to the discretion of the reviewing authority.

In many instances when the individual was confronted with the regulations pertaining to homosexual behavior, he has pleaded ignorance of these regulations and in some instances was surprised that society considered homosexual relationships to be wrong.

e. Clinical evaluations. Colonel Glass expressed an opinion that Army clinical evaluations are adequate at the present time. However, Major Williams did not concur in this position, as pertains to the Air Force, and stated that in most instances the clinical evaluations are not adequate for the purposes of reviewing authorities. This is a result of the wording of the directive in that specific questions are asked: (1) Is this man sane and legally competent; and (2) into which category does he fall? Due to the fact that in the past when the patient was worked up completely, in most instances the psychiatric evaluation and the psychiatric recommendations were ignored and the boards displayed interest only in the answers to the two basic questions. Therefore, the psychiatric examiner stopped doing complete evaluations.

f. Review procedures. It is felt that the review procedures should be carried out. However, it is felt that the review boards should be permitted more flexibility in the authorized disposition of homosexuals and the review boards should be permitted to dispose of each case on its individual merits. The Army witness is of the opinion that review procedures should be decentralized so that final action in cases involving homosexuality might be taken by an officer exercising general court-martial jurisdiction.

g. Responsibility to the civilian community. The services do have a definite responsibility to the civilian community at any time an individual's behavior is likely to be a problem to the community. In the case of overt, confirmed homosexuals, this does not create a problem in that his behavior is so stabilized that he could normally live in a certain substrata of society without bothering anybody. However, it is felt that the service is creating a group of unemployables, and otherwise disrupting person's lives by the undesirable discharge. This is a problem that the community cannot solve. The man should not be sent back to his home town for help because the home town usually isn't in any position to help him, and in many cases the services could do it better. In addition, many of these people who are discharged have developmental illnesses, or depressions that require hospitalization, in addition to people being unwilling to employ this particular group.

h. Screening of applicants for enlistment. The screening procedures in most instances are adequate in that more intensified screening would serve no useful purpose.

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i. Should women be treated differently than men? The problem of female homosexuality was discussed and there were no definite recommendations arrived at. The discussion was centered namely on the cultural and social differences between male and female behavior which makes certain acts between females permissible whereas the same acts between males would be considered homosexual acts.

4. Recommendations:

a. The psychiatrist should be considered as a friend of the court and his professional opinion should be utilized in the determination of the disposition of homosexuals or those who have committed homosexual acts.

b. Review boards should be permitted flexibility in order to evaluate each case on its merits, and medical evidence should be utilized in order that the board might have a clear conception of the individual concerned.

c. One-time offenders, and those people who are not considered to be homosexuals, should be retained in service if their previous service has been satisfactory and they have a great potential value to the service.

d. If there is any offense against the Uniform Code of Military Justice in addition to homosexuality, the individual should be tried for that offense.

e. Confirmed homosexuals should be discharged, but with the type discharge their service records warrant rather than with a punitive discharge on the basis of their homosexuality.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY DR. MANFRED S. GUTTMACHER

1. Chief Medical Officer of Supreme Bench of Baltimore; psychiatric advisor to a committee of the United Nations; Chairman of the Legal Aspects of Psychiatry Committee of the American Psychiatric Association, 1938 - 52; Member of the Advisory Committee of the American Law Institute.

2. General Opinions expressed in testimony:

a. We (various committees) have taken the attitude that homosexual relations between adults where there is consent by both parties, unless there is public affront, unless it is an exhibitionistic kind of performance, should not be considered a crime at all.

b. Church of England Committee appointed to review this problem (homosexuality) took the view that this is a religious problem and not a problem for civil authorities.

c. However, where force or fraud is employed, sexual relations, whether they be heterosexual or homosexual becomes a very serious offense.

d. The service classifications are basically sound.

e. It is not easy for psychiatrists to determine whether or not an individual is or is not a homosexual.

f. Very sceptical regarding the screening process would keep out individuals presenting homosexual problems.

g. As far as ordinary homosexual is concerned there appears to be nothing the service owes the community.

h. I cannot speak with any authority about the soundness of the "Kinsey" figures. I feel it was an important contribution.

i. I think the cases of the one-time offenders should be individualized. These people (drunk, experimenting and youthful) should be looked upon with a good deal of circumspection.

j. The question of deterrent is the hardest thing to measure.

k. I think there has been some change in medical thinking in regard to treating of homosexuals.

l. Certain civilian courts since 1949 have taken a more benign view of the problem. With regard to what the medical profession has learned of this problem in the last ten years, no outstanding contributions have been made.

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m. There has been no change in the attitude of the man in the street toward homosexuality. But the clergy, judges and people of that type tend more to the view of "sin not criminat offense".

n. In civilian life most of the routine homosexual cases are disposed of in magistrate's and police courts by fines or short jail sentences.

o. No statistics to establish from experience in the Baltimore courts whether homosexuality is on up-grade. Doubtful that there is any variation from decade to decade.

p. Homosexuality has not become a serious, vast problem to concern everybody. Doubtful that it is a very different problem from what it was a hundred years ago. It is one of the human problems for which there appears to be no way to reach a solution.

q. Civilian authorities have a pretty high degree of tolerance with regard to the routine homosexual activity. The service policy of a choice between an undesirable discharge or a court-martial is more severe than the civilian approach.

r. Instruction, training or education of service personnel regarding homosexuality and its dangers would neither help nor increase the experimenter cases.

s. The important aspect of the problem is not so much the service regulations in themselves but the manner in which they are administered.

t. When dealing with a definite neurotic, one who clearly stands out in the opinion of the psychiatrist, he should be treated as a medical problem and disposed of through medical channels.

u. You can not generalize about the question of the homosexual being a security risk. This matter of security risk can be overemphasized although it does not exist.

v. The treatment of homosexuals, with a view toward cure is a notoriously difficult area in which to measure your treatment results. Statistics in this regard are very limited.

w. My work as a medical member of the court does not give me the position of privileged communications. Examinations made for a court are generally not privileged.

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3. Comments on specific items of interest.

a. One-time offender.

The three categories (man who is drunk, the man experimenting, and the very youthful) are important. These cases should be individualized. These three categories are worth individual examination certainly and as much exploration as one can achieve, and if they seem to have personality assets which are of value and if they have given service or potentially are able to give service of some value, I would feel that in many instances it is worthwhile to retain them in the service with some degree of surveillance rather than automatically discharging them. If it is a single act so far as one can tell or if inquiry leads one to believe that it is a single act, I would think that a fair number of these might be salvaged.

b. Voluntary confessions:

Nothing pertinent.

c. Type of discharge. See testimony above re sub-paragraph a.

d. Treatment of Class III offenders. See sub-paragraph a above.

e. Clinical evaluations. Nothing pertinent.

f. Review procedures. Nothing pertinent.

g. Responsibility to civilian community:

No sense in informing civilian authorities of discharge for homosexuality. Nothing that the service owes to the community in this regard (this does not of course apply to Class I cases involving force or fraud). It is not a social responsibility of the service to inform the community.

h. SecNav Instruction 1620.1. Nothing pertinent.

i. Administrative practices. Nothing pertinent.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY MR. JOHN M. BARRON, ONI

1. Biographical data and experience of witness.

37 years of age, served as officer in ONI on active duty during World War II, from 1945 to 1946. Special agent, Office of Naval Intelligence from 1948 on. From 1949 to 1954 handled all homosexual investigations at the Office of Naval Intelligence. From 1954 to date Supervisor of all investigative case categories.

2. General opinions expressed in testimony.

Mr. Barron discussed the security implications of the homosexual. He first presented four classical cases of homosexuals involved in security leaks or violations of one type or another.

During the discussion, Mr. Barron expressed the following opinions with respect to homosexuals:

Experience indicates that the danger of blackmail exists mainly from the individual in rough trade over the one who occupies a position of prominence and has something to lose. (However only one case of blackmail is on record.)

Homosexuals strike up quick, intimate contacts with strangers and as a result of a drive to prove superiority freely discuss information to prove that importance.

In any visits of homosexual hangouts, you will hear classified matter discussed. (It was also brought out that in most gatherings of so called normal people you will hear classified matter discussed.)

It is a characteristic of the homosexual that he is a prolific letter writer, and discusses all matters freely in such correspondence. The homosexual is a security risk because of the rapid turnover in association and the fact that he is prolific.

3. Comments on specific items of interest.

Mr. Barron agreed on questioning that the record does not show that every homosexual reveals classified information. (Examples of individuals were discussed who were caught subsequent to separation but had records of long, honorable and valuable service.)

Statistical data does not exist which would provide evidence that a greater percentage of homosexuals break security than heterosexual individuals.

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Certain foreign governments use homosexuals in intelligence branches, and try to identify homosexuals, among others, to prey on.

Promiscuous heterosexual behavior is as much a security problem as promiscuous homosexual behavior; i.e., promiscuous sexual behavior of any nature is a security problem.

ONI does not initiate investigations on homosexuals; such investigations are requested by command.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY MR. S. FRANK SCOTA, ONI

1. Biographical data and experience of witness. Forty-one years of age, with the following experience in investigations: 4 years - "Trooper" - Maryland State Police; 2 years - "Investigator" - U. S. Naval Air Station, Patuxtent River, Md.; 5 years - "Special Agent" - Office of Naval Intelligence - attached to IO-PRNC; 3 years in charge Investigation Unit of the Office of Naval Intelligence responsible for cases of sexual misconduct investigated by the District Intelligence Offices and the Office of Naval Intelligence.

2. General information imparted in testimony: The following is the general procedure in the Department for conducting an interrogation:

a. The individual is taken into a room, where apparatus is installed to provide a record of the interview and is warned in compliance with Article 31, UCMJ concerning self-incrimination. He is also advised as to the nature of the discussion.

b. The reactions of individuals are different and judgment must be used in the discussion. It is a touchy situation and he is not told of all the information that is held at one time. This serves two purposes - ensures that the individual is telling his own version, and eliminates possibility of admission to allegations in order to avoid service.

c. Interview progresses to all activity he has participated in - individual is most times timed, and tone of voice can discourage discussion. When he makes his first admission, many times within first ten or twenty minutes, he may remain rest of the day in getting a statement prepared and signing.

d. An interview log is maintained showing time individual arrived, condition, concerns his dress, and whether physically capable of discussing the subject, and when terminated.

e. Interviewers do not in practice offer counsel; should he request or desire counsel, such will be made available, but this rarely has occurred.

f. The individual is requested to make a written statement in his own words at the end of the interview. Many times the individual requests assistance in preparation of the statement.

3. Comments on specific items of interest:

a. Individuals are permitted to smoke, are offered coffee and the opportunity to get meals at appropriate times.

Enclosure (1h)

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b. In the field interviewers are requested to change location of interview periodically so that outsiders will not jump to conclusions on the purpose of the interview.

c. With respect to the lie detector test, a polygraph is used when there is a question of the words of one man against another. First the accuser and then the accused later. An individual is never forced, however, to take the test.

d. The names of informants are not normally divulged during interview, but most individuals know the identity of the informants.

e. The meanings of the various terms used in the interrogation are now explained during the interview to avoid future protestations that the individual did not know to what he was confessing - i.e., homosexual, active partner, passive partner, etc.

f. Investigations of homosexuals are undertaken on request; they are not accomplished on the initiative of ONI. There is no witch hunt on the part of ONI.

g. Experience has shown that individuals with homosexual inclinations sometimes have two sets of friends; those with whom they work and live, and those with which they participate.

h. As a class, the number of cases involving sexual perversion and misconduct were fewer in 1956 than 1955.

i. It was Mr. Scinta's opinion that the homosexual directive is quite sound as it now stands, but that there is confusion with the Class III category.

j. ONI does not normally notify civilian authorities of suspected civilian homosexuals except under special circumstances. If he were leader of a Boy Scout group or a teacher, the police would be given a hint. If the civilian is a government employee the information would be made available in normal channels.

k. Mr. Scinta believes that a change to the directive to a provision for court-martial vice general court-martial might in rare cases make it difficult to obtain a statement.

l. Although in the SIXTH Naval District where it is the practice to offer counsel prior to interview no appreciable difficulties have been encountered, it would in the long run be more difficult to obtain statements, and perhaps nullify the results of an attempted interview.

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m. The fact was brought out that instances occur wherein the individual retracts a statement previously submitted. This happens most frequently in the case of women. The effect of such retraction is variable. When women are interrogated, they are always asked if they want a woman officer present present. Most women do not want another one present during interview.

n. It was brought out during the interview that no statistics are available to indicate the volume of the investigative workload on homosexuals, the number interviewed, and the number now just in administrative channels.

o. Most interviewers are not aware that immunity can be promised under certain circumstances. Such immunity is not offered or granted by ONI investigators.

p. With respect to the charge that the individual was restrained too long during interview - he is not restrained, can leave at will; he is given breaks in the interview. Normally an interview does not last longer than eight hours, most of the time being consumed in the preparation of a statement.

q. For information of the Board, a description of the Mattachine Society was presented and connection with the publication "ONE" explained.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONCERNING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY

Commander W. M. Bliss, U.S.N.

1. Commander Bliss is Liaison Officer to the Office of Industrial Relations from the Office of Naval Intelligence (CNO).

2. General Opinions Expressed in Testimony:

a. "...policies and procedures with respect to civilian homosexuals and the policy in general is to get rid of them when found, identified, and properly tagged and to do so under normal Civil Service procedures."

b. "...it is the policy that unless security requirements prevent it that all separations shall be under the normal Civil Service rules, the same as in any other Government agency."

c. NCPIs 45 and 210 govern; NCPI 29 (security) implements Exec O 10450, but this latter regulation is used most rarely.

d. Procedure with respect to probationary appointees is much simpler than with respect to those who have full-fledged permanent status.

e. During period May 53 to Sep 56, 126 cases in OIR separated for "sexual perversion," but these figures full of loopholes and unreliable.

f. Procedures from above instructions for separation of probationary and permanent employees quoted.

g. "Immoral, indecent or notoriously disgraceful conduct" is the category into which homosexual separations fall.

h. Arrest records for perversion are monitored by OIR, but such records are frequently equivocal, and decision on these is in final analysis up to the commanding officer of the activity concerned. Occasionally (p. 13) decision of the CO is reversed.

i. This program involves all employees, both white and blue collar.

j. UD would probably prevent a man from being hired.

k. Form 50 is the separation paper given a civilian separatee, and the reason given thereon for the separation is usually general rather than specific—reference to homosexuality, for example, would not occur. This would prevent future employment in Civil Service, however.

l. Policy applies to an "act" as well as a "way of life."

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m. Present procedures adequate.

n. We don't go looking specifically for homosexuals. Civilian problem not the same as in the service.

o. No specific guidelines for acts of "immaturity or drunkenness" but C..S..procedures permit latitude from a warning to a dismissed on the first offense.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY:

Captain L. D. WILDE, W, USN, Assistant Chief of Naval Personnel for Women
Commander E. J. SOWERS, W, USN, Administrative Assistant, Office of Assistant Chief of Naval Personnel for Women
Colonel Julia E. HAMBLET, (W), USMC, Director of Women Marines
Lieutenant Colonel Lily H. GRIDLEY, (W), USMC, Head, Legal Assistant Section, Discipline Branch, Personnel Department, U. S. Marine Corps

1. General information imparted in testimony:

a. Captain Wilde and Commander Sowers:

As far as the present instruction is concerned our administrative procedures for handling the cases involving women are simply excellent. Our procedures over the last two or three years are much better than in the past. Disposition of the so-called Class III cases is conservative and we have been cautious in trying to be equally fair to the Navy and to the individual concerned.

b. Colonel Hamblet and Lieutenant Colonel Gridley:

Generally delighted with our current administrative procedures. Believe there is reason to give thought to and recognize perhaps that in the so-called gray area, Class III, there is a real difference in the way men and women should be treated. Until an acceptable definition of what constitutes a homosexual act between women, the cases involving women need to be treated differently than cases involving men. The Marine Corps is currently pursuing a policy, as far as women are concerned, in light of the above, to get out of the service those with homosexual tendencies. The majority of women cases go out as Class III. Somewhat different than in the Navy. We are very much in favor of this way of disposing of women cases until we have a greater understanding of homosexuality as it concerns women.

2. Comments on specific items of interest:

a. Captain Wilde:

(1) Witch-hunting and gossiping is a real problem in cases involving women.

(2) The Navy could do a better job in follow-up education on the subject of homosexuality.

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(3) We would always wish to rid ourselves of the women of whom we were highly suspicious rather than try to rehabilitate them in the service.

(4) I would not be willing to say firmly that I felt that as an individual every one-time offender should be discharged.

(5) Are we inviting homosexuals to enter the service if we are not rough on discharges?

(6) We have no information that investigators have mishandled or abused women suspects but they talk tough, awfully rough and tough, to them and women are not used to that.

(7) I don't feel we can make a clear-cut rule that the first offense will be excused. I think it would depend upon the local and nature and extent of the offense.

(8) Remove Class III instructions and refer such cases for medical treatment.

b. Colonel Hamblet:

(1) It is good for us that we remove these people from the service and not subject other women to living around this.

(2) Our biggest problem is trying to get a definition of what constitutes a homosexual act in regard to women.

(3) Once a woman's name has been mentioned in regard to one of these affairs, from the ONI point of view even if they haven't been able to prove a thing, it is almost impossible to get clearance on them.

(4) Guidance in what constitutes homosexual behavior in women is necessary.

(5) You can't show it in an educational film if you can't define it.

(6) I do not have enough knowledge of the subject to answer the question "Should one-time offenders be retained in the service?"

(7) I am going to give the youngster the benefit of the doubt and say she is Class III instead of Class II and give her a CCG instead of a UD.

(8) Class II should be treated the same as men.

(9) I think if you do not discharge Class III cases it would be distructive, whatever the type discharge is used.

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(10) The majority of the Marine Women cases do not go out with U.D.

(11) We would want to keep Class III or something comparable to it.

(12) If Class III is a medical problem then the medical people should set the guidance.

(13) We have few true homosexuals among the women of the service.

c. Commander Sovers:

(1) In three years plus we have not (Navy) had anyone submit a recommendation for discharge for Class III merely for having seen someone embrace or kiss another person. It might not have been an overt act, but a lot of fire, a lot of smoke.

(2) U. D. should be retained for extreme cases, coercion. Keep U. D.'s for Class II.

(3) Some of the investigators are a little rough on the girls.

d. Lieutenant Colonel Gridley:

(1) Our investigations today do not involve long lists of suspects as they used to. In this way better morale is maintained.

(2) Class III category should exist.

(3) Statements of the women offenders are not written by them but by the investigators.

(4) Many of the women interrogated do not understand the terms being used.

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BRIEF OF TESTIMONY BEFORE THE SECNAV BOARD CONSIDERING POLICIES AND PROCEDURES WITH RESPECT TO HOMOSEXUALS BY DR. FRANCIS BRACELAND ON JANUARY 31, 1957

1. Important biographical data and experience of witness.

Psychiatric Consultant to Surgeon General, U. S. Navy
Superintendent, Hartford Retreat, Hartford, Conn.
President of American Psychiatric Association
Formerly:
Executive Secretary, American Board of Psychiatry, 1945-1951
President of American Board of Psychiatry, 1951-1952
CAPT, MC,USNR, during WWII. Head, Neuropsychiatric Branch, Bureau of Medicine & Surgery
Dr. Braceland has over 25 years' experience in the specialty of psychiatry and is considered to be one of the foremost authorities in this country.

2. General opinions expressed in testimony.

Dr. Braceland introduced his discussion with an historical account of the development of the homosexual problem during his period of service in the Navy. He is able to speak authoritatively in this area as he was a member of many Navy Boards and has an intimate knowledge of the thinking behind the establishment of these boards as well as the frame of reference under which they operated. He presented his own attitudes regarding the problem and reiterates his understanding and recognition of the problems confronting the military services in the attempt to resolve the problem and to establish directives which are realistic.

In his historical account he discusses briefly the development of the psychiatric screening process and the concomitant conflict with Selective Service and the Army over this program.

He describes motivational aspects of draftees and presents a description of the "reverse malinger" as well as the denial of homosexual tendencies in order to be accepted. The reverse malingerer is an individual who hides defects in order to enter military service. This is done for many reasons, but the outstanding reason is that of social pressure. For this same reason, homosexuals would deny activity at the draft board level because, in many instances, friends and neighbors were on the draft board and they were reluctant to reveal their defect to these people. These were arguments which he used to support the initiation and maintenance of the screening program.

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The primitive psychiatric screening at that time was successful in ridding the service of a substantial segment of that group; however, he felt that in the process we were guilty of doing the individual a grave injustice in that we uprooted a man from a job in which he was happy and productive, brought him into service for a brief period and then sent him back to the community with a discharge which was undesirable and as such unable to reenter his former employment. He restated his position that the type discharge awarded was inordinate to the offense. In addition, as a member of the clemency board for a period of 2 to 3 years, he did not recall any upgrading of the discharges in the case of homosexuals despite the fact that people with much more serious offenses were given clemency. He reiterates that although he recognized that homosexuality could not be condoned in the military service, he did not feel that the disposition was correct.

He describes the methods developed by local medical authorities to circumvent the stringencies of the directives and still rid the service of these people. The basic problem would be disguised and the man would be discharged with another diagnosis.

He discussed at some length the problem of violating a professional confidence by medical officers and chaplains. By the directive, they are not permitted privileged communications; and when an individual presented himself to the chaplain with a problem in the psychosexual sphere, he was referred to the psychiatrist who in turn was obligated to make a formal report to BuPers and then it became an administrative function without any further consideration of any of the other aspects of the case. In addition to doing a grave injustice to the individual who was not represented by counsel, he was not advised as to his rights, or afforded a hearing of any kind, and he was required to testify against himself. It also imposed a hardship on the chaplains and psychiatrists who had to betray the confidences gained in an interview.

Also, despite the fact that this individual had no offense in the Navy, he was penalized as if he had one and the punishment was so severe that he was penalized for the rest of his life.

Dr. Braceland discussed the problem which he considers to be foremost in the minds of the laymen involved in the processing of homosexuals; that is, the concern that the individual is making these claims fraudulently in order to escape military service. Dr. Braceland is of the opinion that this is not a serious problem in that if a man is willing to admit such behavior, he is undesirable on the basis of such malingering. Secondly, that there are many easier methods to escape service and methods which are socially acceptable.

He discussed a community problem which arose in the Washington area during and immediately after World War II where these people who had received "yellow" discharges accumulated in little groups attempting to get their discharges changed because they were afraid to return to their homes.

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Homosexual behavior is described as a part of a basic neurotic personality. A brief description was given of current psychiatric attitudes and thoughts concerning the etiology and dynamics of homosexual behavior and also the current thinking in regards to therapy.

Dr. Braceland described childhood and adolescent exploratory sex play with members of the same sex and explains it as normal behavior. He also points out some of the dynamics concerning the residuals of the guilt and anxieties aroused by this play. In early manhood there is still much guilt about this play, which at times reaches panic proportions. If the service handles such an individual in a routine manner and pins a homosexual label on him, it reinforces his own doubt concerning his sexual role and might precipitate an overt psychosis.

Dr. Braceland also covers the question of the lack of punishment in the case of a civilian who becomes homosexually involved with a military man. He admits that he never knew, and still does not know, how to handle the situation unless the civilian is apprehended in the act. This is a problem of concern as the member of the military may be accused and processed as a homosexual on slim evidence without being caught in the act, yet the civilian will go scot free unless apprehended in the act.

There is no problem in the handling and processing of the homosexual who is guilty of assault or other criminal intent, but that the difficulty surrounds the proper disposition of the one-time offender.

3. Comments on specific items of interest.

a. The One-Time Offenders. The cases of one-time offenders are worthy of a complete psychiatric and medical investigation to determine the circumstances of not only the occurrence but the background of the person involved and whether or not this was a symptom of underlying defects which might be helped. This would serve the Navy and the individual better and that disposition could be made on an individual basis.

b. Voluntary Confessions. In many instances the voluntary confessions were obtained from extremely naive individuals who did not recognize what constituted homosexual behavior. Also, many of the voluntary confessions were obtained under a certain amount of duress. Dr. Braceland reiterated his stand that he felt that a man should be properly represented and that he should be made aware of everything that might happen and that he be advised as to his rights.

c. Type of Discharge. In many instances the undesirable discharge is an inordinate punishment for homosexuality in that it is a punishment which lasts forever. In this vein, he describes the exploratory type sexual behavior in the young so as to distinguish them from the true homosexual. The discharge can be liberalized in

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appropriate cases without disrupting discipline, and this can be carried on through a consideration of each individual case.

The confirmed homosexual is no problem because the over-all good of the Navy is served by getting him out. Dr. Braceland reiterates that in the case of the one-time offender, that consideration of the man's previous service and his personality structure should be utilized in the determination of ultimate disposition. One-time offenders should not be marked for life with an undesirable discharge and many of them may be retained on active duty. There should be some effort to rehabilitate some of the individuals, particularly the one-time offender or the "Class Three". If it is determined through a psychiatric examination that they be discharged with the type discharge their service record warrants, this would cut down the number of suicides and the number of family tragedies which follow an undesirable discharge. If it is determined after a careful study that the man must be discharged, the separation should be done in a manner which will not penalize him for the rest of his life. The only effort in life of many people with this type discharge is directed to removing the stigma attached to his discharge.

d. Treatment of the So-Called "Class Three" Offender. Dr. Braceland describes the difficulty in handling this type offender under current regulations, particularly those with single offenses early in life. Many of the adolescent experiments and resulting panic-like states in individuals who have had an early homosexual contact or homosexual-like contact, and also in some cases the improper handling of a "Class Three" offender, may precipitate a frank psychosis. This is so because present binding regulations have reinforced the individual's own feelings of doubt regarding his sexual role and he is now officially designated as a homosexual.

e. Review Procedures. There is a need for technical interpretation of some of the situations which arise and somebody should be on these boards to inform the board as to an interpretation of the material presented and also the present-day psychiatric thinking. Such professional advice is indicated both for the protection of the Navy and for the protection of the individual.

f. Responsibility to the Civilian Community. The attitudes from the beginning regarding sending these men back to civilian life was "we got them from you, and we're giving them back to you." However, this resulted in an accumulation of individuals in little groups because they were afraid to go home with their discharge. During the war, it was the feeling that the responsibility was limited because the military services were concerned with a war. They were taking men in and were discarding those that they couldn't use. The Navy cannot take upon itself the problem of homosexuality in the community. The only thing that can be done is to not take a man who is working into the military service for a brief period of time, and discharge him with a type discharge that will prevent his obtaining further employment. This is pointed up by the fact

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that many homosexuals in civilian life are functioning individuals and contribute much to the community. In this connection, attention is invited to the importance of the Frye Study, at Yale.

The Navy can quietly, and with understanding, be the moving element in taking the lead in developing a new approach to homosexuality, without letting down its standards.

g. Screening of Applicants for Enlistment. Screening procedures should be carried out in order to eliminate these people immediately.

One reason that screening is ineffective in ferreting out homosexuals is that we really don't get a chance to do a complete study of the personality of the individual. Any man who has the intent to deceive, whether he is a reverse malingerer or a confirmed homosexual, could deceive the screener very easily. The Navy's stand on screening is compared with the Army's lack of screening and it is pointed out that the Navy's screening set-up makes our selection far superior to that of the Army. The Navy has always been firm believers in the screening process, and despite much opposition from the Army and the Selective Service, the Navy maintains the policy of screening all enlisted personnel. There are many problems which would arise in attempting to do screening in a recruiting station.

h. Should Women be Treated Differently Than Men? This area again covers the social and cultural aspects of this problem. Females are permitted to indulge in much behavior which in a male would be considered homosexual. There is little problem with female homosexuals unless they were militant. They should not be treated any differently than men, but, again, each individual case needs careful study.

The emotional attachment which can develop between two females, makes it very difficult to detedt and determine whether there is actually any homosexual activity between them. There should be some control placed on the overzealous female who starts "witch hunts."

Recommendations.

a. One-time offenders should be completely worked up psychiatrically, and this work up should be utilized in determining disposition.

b. When a man makes a voluntary confession, he should have benefit of counsel.

c. The type discharge awarded should be on the basis of the man's service and not merely governed by participation in homosexual activity.

d. Intensive education in the beginning of an individual's Naval career, in the light of new knowledge and the publics' freedom of

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discussion of this problem, would in some measure help to deter activity. Visual aids could be developed which would be extremely beneficial in this area. However, they must be presented artistically and graphically so there is no sexual stimulation, and so homosexual activity does not appear attractive. From the point of public relations, and also the individual, it is essential that all possible be done in the way of prevention.

e. Psychiatrists should be members of a review board to interpret technical information and the psychiatric evaluation.

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e. Air Force Regulation AFR 35-66

f. Marine Corps Manual

g. Bureau of Naval Personnel Manual

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i. Administrative Regulations and Procedures Governing Navy Discharge Review Board.

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2. The following is a Bibliography on Homosexuality used in development of the medico-psychiatric aspects of the report:

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Enclosure 2

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PRELIMINARY CHIEF OF NAVAL PERSONNEL STUDY OF CASES OF HOMOSEXUALITY

Analysis of 476 individual cases involving sexually aberrant conduct, processed during the period 16 July - 26 November 1956.

Encl: Charts A through X and Table I and Sample Homosexual Rings

1. INTRODUCTION. A continuing statistical survey of sexually aberrant conduct in the Navy, as reflected by cases referred to the Chief of Naval Personnel for decision, was commenced in July 1956. Data extracted from the individual cases is collated by Tab Records. In the interest of providing early returns in connection with revision of policy on the handling of homosexual problems in the Navy, a preliminary analysis based upon 476 cases received to November 1956 has been completed.

2. LIMITATIONS. Due to the varied sources from which some data were of necessity obtained, with consequent unreliability for purposes of comparison, conclusions in certain areas are of less than desirable validity. However, certain of the most significant conclusions, ralating to incidence by rate, age group and the like, based upon official records of high reliability, are, of course, comparably reliable. No attempt has been made at this time to further analyze certain sub groups within the population surveyed, where the incidence of homosexual conduct is disproportionately high. Reliability of findings proposed in this memorandum are indicated in each statement.

3. TENTATIVE FINDINGS.

a. RATE OF OCCURRENCE (TABLE I) - shows an overall rate of occurrence of aberrant sexual conduct of about 1 per 440 enlisted persons per year in the whole Navy, ranging from a minimum of about 1 per 1200 or 1300 in rating groups III, VIII, IX and XII to an extreme rate of more than 1 per 200 per year among hospitalmen and hospital corpsmen, seamen, Waves, Yeomen and certain others. The rate for petty officers (less problem groups V and X) is about 1 per 910 per year while for all non-rated personnel, less strikers, it is 1 per 231 per year. Fairly reliable.

b. AGE DISTRIBUTION (CHART A) - shows that the great majority of homosexual incidents involve individuals under 25 years of age. Highly reliable.

c. LENGTH OF SERVICE (CHART B) - indicates that the majority of individuals involved in homosexual conduct have less than 7 years total service, active and inactive. Highly reliable.

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d. MENTAL GROUPING (CHART C) - comparison with the normal Navy GCT curve shows individuals involved in homosexual conduct do not fall into any particular area, although there is a slightly greater tendency for those in the upper mental groups (I and II) and in the upper half of group IV to engage in such conduct, while those in group III show tendency to conventional standards. Highly reliable.

e. PLACE IN WHICH LAST OFFENSE OCCURRED (CHART D) - less than one-third of incidents reported occurred aboard ship or within the confines of naval shore commands, while over two-thirds occurred in civilian settings. Reliability excellent.

f. EDUCATIONAL LEVEL (CHART E) - comparison shows that in general individuals involved in homosexual conduct do not fall within any particular educational group. However, those who have failed to progress beyond the second year of high school and those who have finished 4 years of college show a greater tendency to become involved in homosexual conduct. Highly reliable.

g. INCIDENCE OF SPECIAL CASES:

(1) Chart F1 - comparison of incidence rate per 1,000 per year by rating groups and selected rates is self-explanatory and highlights problem areas in the management of homosexual conduct. Reliability fair due limited sample.

(2) Chart F2 - compares significant rated and non-rated groups to highlight certain problems as above.

h. PAY GRADE (CHART G) - confirms earlier conclusions that homosexual conduct appears principally among the lower rating groups, pay grades E4 to E7, being disproportionately high in pay grades E5 and E6. Validity excellent. Highly reliable.

i. DUTY STATION (CHARTS H AND H1) - indicate that less than one-third of all cases are received from Fleet ships and that the incidence of homosexual conduct in Fleet ships and Fleet Air is proportionately low. Ships company of school commands and of medical and dental activities provide a disproportionately high number of cases. Reliability fair due lack of good naval population distribution comparisons.

j. FAMILY BACKGROUND (CHART J) - this study is of low validity but indicates that a poor family background may render the individual more receptive to homosexual conduct. Low reliability due variation in sources of data.

k. JUVENILE AND MILITARY RECORD (CHARTS K AND L) - these charts demonstrate that individuals involved in reported sexual aberrations are, on the whole, an otherwise well behaved lot. Highly reliable.

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l. PRE-SERVICE ENVIRONMENT (CHART I) - comparison indicates that a significantly higher proportion of individuals from small towns and cities of under 100,000 population tend to participate in sexual aberrant conduct. This may be primarily because individuals from the larger cities are identified and rejected prior to enlistment. Fairly reliable.

m. RECREATION HABITS (CHART M) - over one-third of the individual records indicate a chosen hobby as the principal recreational outlet while about one-sixth noted active participation in sports as normal recreation. No data for comparison was available. Low reliability and validity.

n. MARITAL STATUS (CHART N) - as would reasonably be expected, only 8.4% of individuals were married, the remainder being single or divorced.

o. RACE (CHART O) - the vast majority of individuals involved in homosexual incidence were Caucasian. The Negroid group showed about two-thirds the normal rate. As a matter of interest, from a limited sample, the American Indian showed a disproportionately high rate.

p. SEXUAL HISTORY (CHART Q) - this evaluation of the individual's sexual history is subjective, being derived from psychiatric reports, confessions, contributory statements and other documents which would not necessarily correlate. Cases received indicate, however, that only 9.66% appear to have pursued homosexuality as a "Way of Life". Over 79% of individuals processed clearly had two or more homosexual experiences somewhere in their background, although age at time of previous offenses, circumstances and attitudes would have to be considered to make this a truly meaningful figure.

q. PSYCHIATRIC EVALUATION (CHART R) - these data do not correlate either with Chart Q or with Chart T, but whether made by a qualified psychiatrist or by a medical officer, indicate that over 57% of the individuals processed were considered to be "probable" or "true homosexuals", while only 6.72% were positively rated as "not homosexual". This is probably a semantics difficulty.

r. METHOD OF DISCOVERY (CHART S) - only 15.3% of cases derived from unsolicited voluntary admissions of homosexual activity or tendencies. Nearly 50% of all individual cases were developed through follow-up of some 20% or less of those cases detected by disinterested parties. It would appear that present policy does not induce voluntary admission of involvement in sexually aberrant conduct, undoubtedly due to the comparative harshness invariable in the disposition of the individual, regardless of how the information came to hand. It is evident that any modification of policy inducing a more ready confession on the part of the less culpable party will probably lead to more rapid elimination of active homosexuals in the naval service.

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s. SEXUAL DEVIATION (CHART T) - shows the types of sexual offenses occurring in the sample. Comment is contained internal through the chart.

t. DISPOSITION OF INDIVIDUALS (CHART X) - of individuals processed during the period of the study, 89.92% were undesirably discharged from the naval service, 5.88% were discharged as Unsuitable and less than 4.0% were retained (deemed innocent parties or not culpable by reason of compelling extenuating circumstances).

4. The Sample Homosexual Rings disclosed by investigation on certain ships and stations are of interest primarily due to the investigative maze developed in some instances.

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TABLE I

SUMMARY STUDY

FOR OFFICIAL USE ONLY

Rate of occurrence of aberrent sexual conduct (detected) in the Navy.

1. General

a. Period: 16 July - 26 Nov 1956; 131 days.

b. Cases: 476 cases processed during period.

c. Navy Population - From NAVPERS 15668, as of 31 July 1956.

2. Overall rate: (enlisted - active duty)

a.	All cases	: 1 per 440 per year
b.	Male only	: 1 per 450 per year
c.	Female (Wave) only (population 5,195 - 31 July 1956 - 12 cases)	: 1 per 122 per year

3. Rate by rating groups

a.	Group I (Deck)	: 1 per 590 per year
	(1) BM only	: 1 per 1180 per year
	(2) QM only	: 1 per 425 per year
b.	Group II (Ordnance)	: 1 per 745 per year
	(1) FT only	: 1 per 392 per year
c.	Group III (Electronics)	: 1 per 1210 per year
d.	Group IV (Precision Equipment) - None	
e.	Group V (Administrative & Clerical)	: 1 per 312 per year
	(1) TE only	: 1 per 263 per year
	(2) RM only	: 1 per 483 per year
	(3) YN only (Yeomen)	: 1 per 191 per year
	(4) PN only	: 1 per 378 per year
	(5) SK only	: 1 per 357 per year
	(6) DK only	: 1 per 232 per year
	(7) CS only	: 1 per 640 per year
	(8) SH only	: 1 per 420 per year
	(9) JO only (Journalists)	: 1 per 67 per year

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f. Seamen (SN, SA, SR) : 1 per 207 per year

g. Group VII (Engineer & Hull) : 1 per 795 per year

h. Firemen (FN, FA, FR) : 1 per 325 per year

i. Group VIII (Construction) : 1 per 1295 per year

j. Constructionman (CN, CP, CR) : 1 per 890 per year

k. Group IX (Aviation) : 1 per 1145 per year

l. Airmen (AN, AA, AR) : 1 per 305 per year

m. Group X (Medical) : 1 per 181 per year

n. Hospitalmen (HN, HA, HR) : 1 per 66 per year

o. Group XI (Dental) : 1 per 555 per year

p. Dentalmen (DN, DA, DR) : 1 per 320 per year

q. Group XII (Stewards) : 1 per 1185 per year

r. Stewardsmen (TN, TA, TR) : 1 per 775 per year

4. Rate by Selected Groupings

(1) All petty officers (including strikers) : 1 per 550 per year

(2) All non-rated (less strikers) : 1 per 231 per year

(3) PO's (less Groups V, X) : 1 per 910 per year

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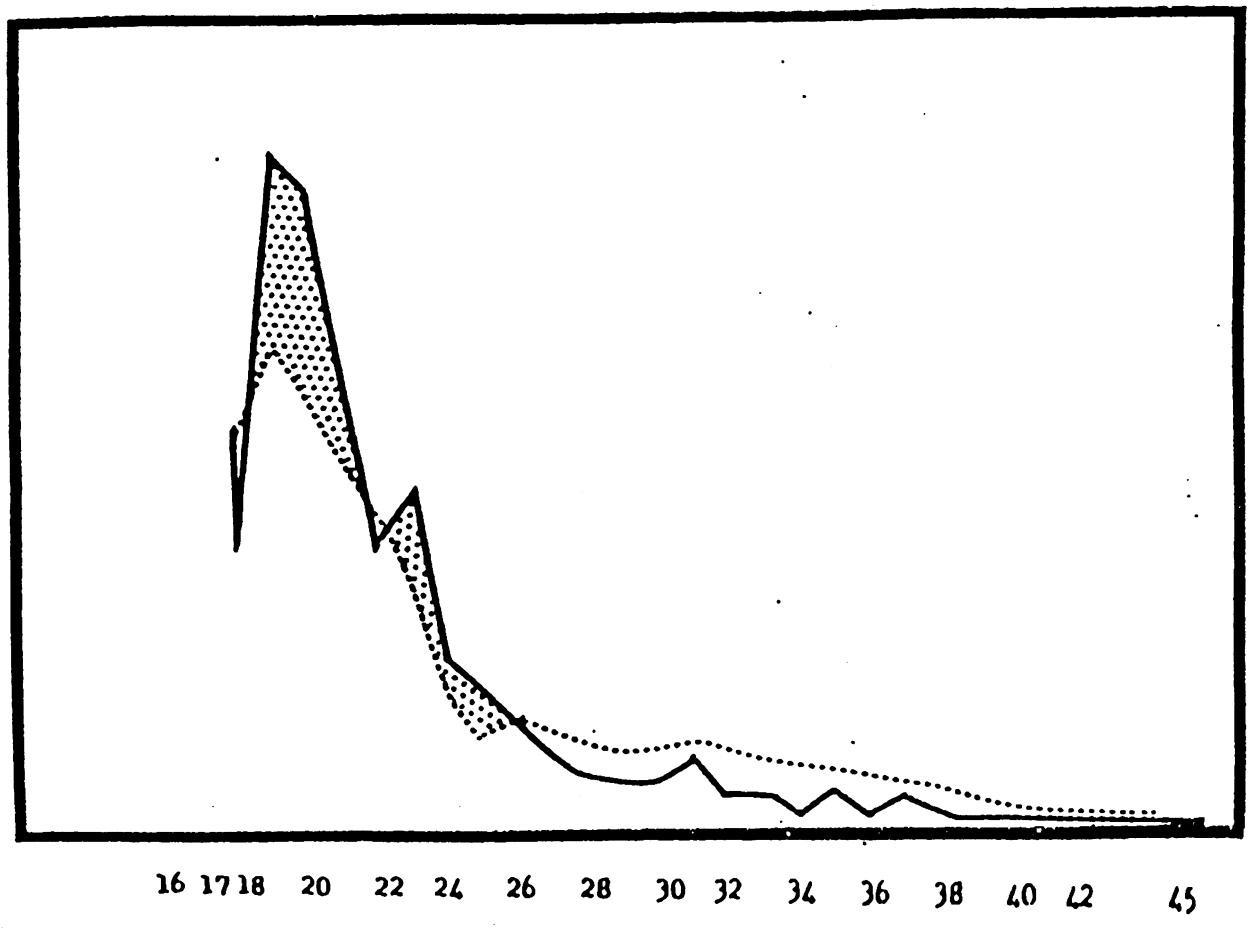
CHART A

AGE DISTRIBUTION
NORMAL - NAVPERS 15658, Page 38, (June 30, 1956 .....
SPECIAL CASES (476) - June-Nov. 1956 _____



AGE	% Spec.	% Normal
40-41	.02	0.5
41-42	.02	0.4
42-43	.02	0.3
43-44	.02	0.2
44-45		0.2
45-46	.02	0.1

137

Enclosure 3(a)

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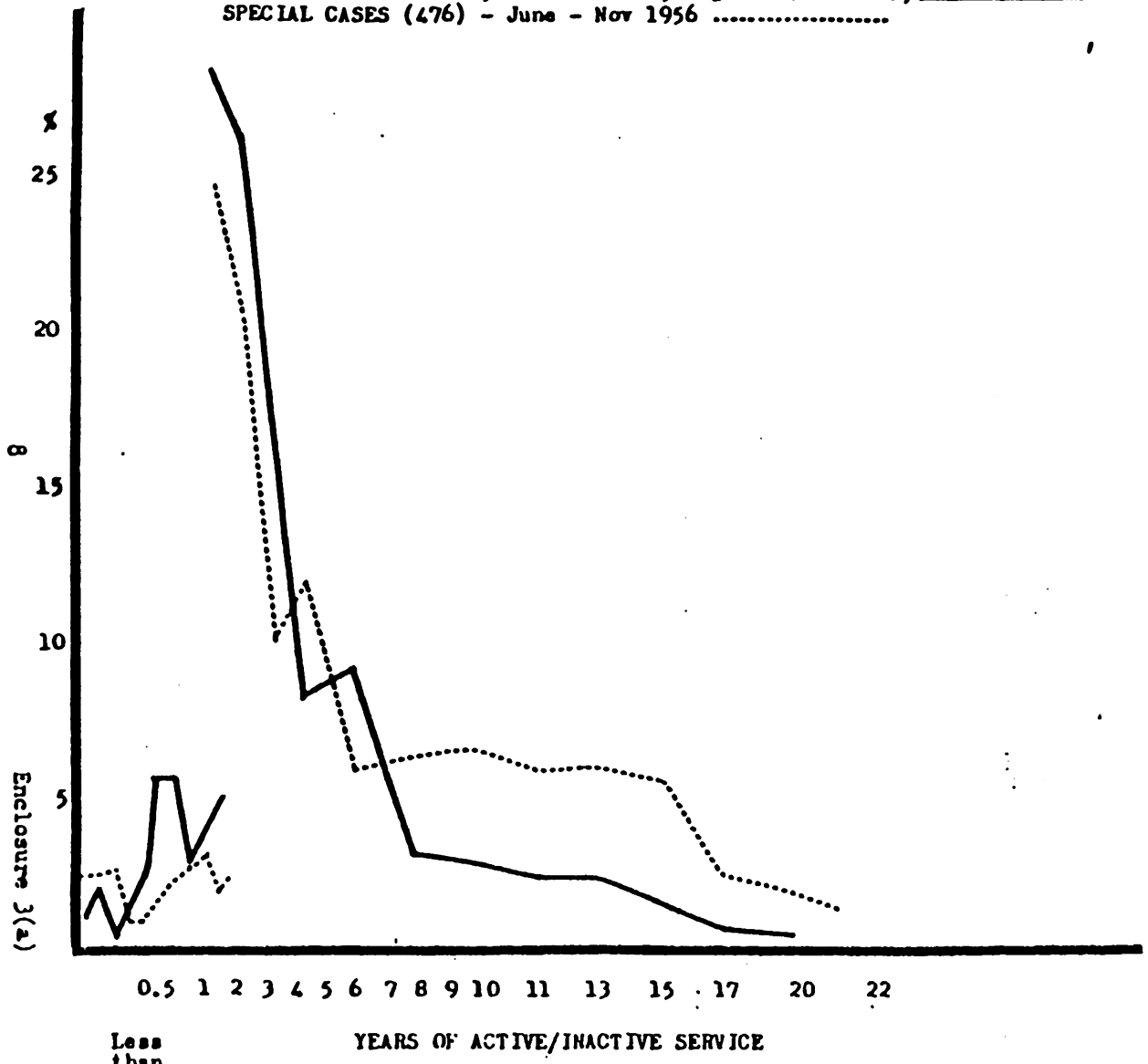
CHART B

LENGTH OF SERVICE (ACTIVE/INACTIVE) IN YEARS (AND FOR 1ST YEAR IN TENTHS) - DISTRIBUTION BY
NORM: NAVPERS 15658, 30 June 1956, Page 44 (USN ONLY) _____
SPECIAL CASES (476) - June - Nov 1956 .....



133

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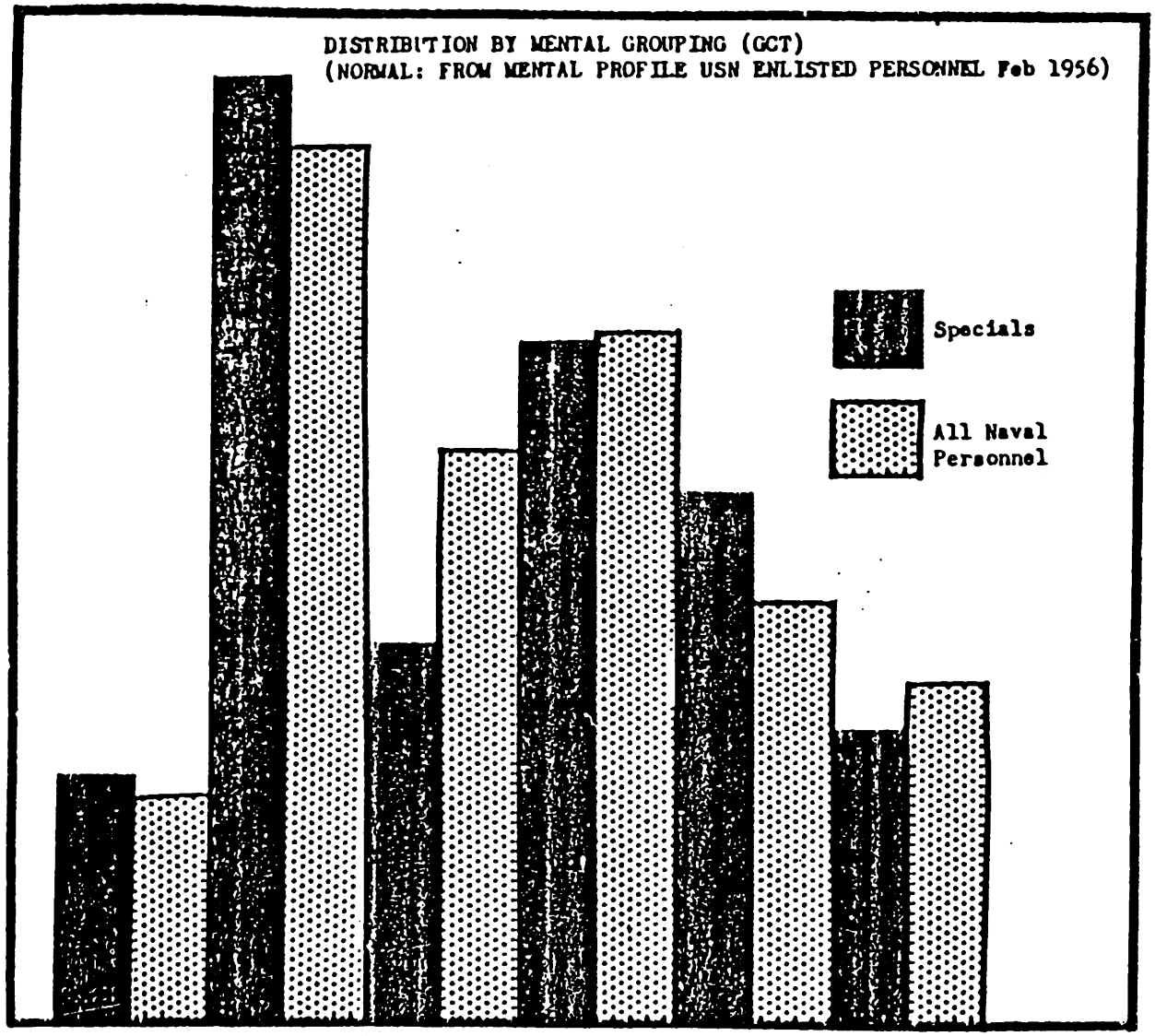
CHART C



Enclosure 3(a)

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CHART D

PLACE IN WHICH LAST OFFENSE OCCURRED

1. Data not kept on first 336 cases.

2. On 140 cases occurring since September 1956 the following were the reported place of incidence:

PLACE	NUMBER	%
Aboard Ship	20	14.28
Naval Barracks/Sta.	25	17.85
Automobile	32	22.85
YMCA/Hotel	36	25.71
Private Home/Apt.	19	13.57
Beach/Park/Rec. Area	1	0.72
Theatre	2	1.43
Public Toilet	4	2.86
Misc. Other	1	0.72
	140	100.00

3. Conclusions:

a. 32.13% of homosexual offenses occur aboard ship or within the confines of naval shore commands.

b. 67.87% of homosexual offenses occur in civilian settings away from naval activities.

(1) 22.85% occur in automobiles

(2) 25.71% occur in YMCA's or hotels.

c. The Armed Forces police should be provided the names of notorious hotels and YMCA's in order to accelerate detection of in service homosexuals.

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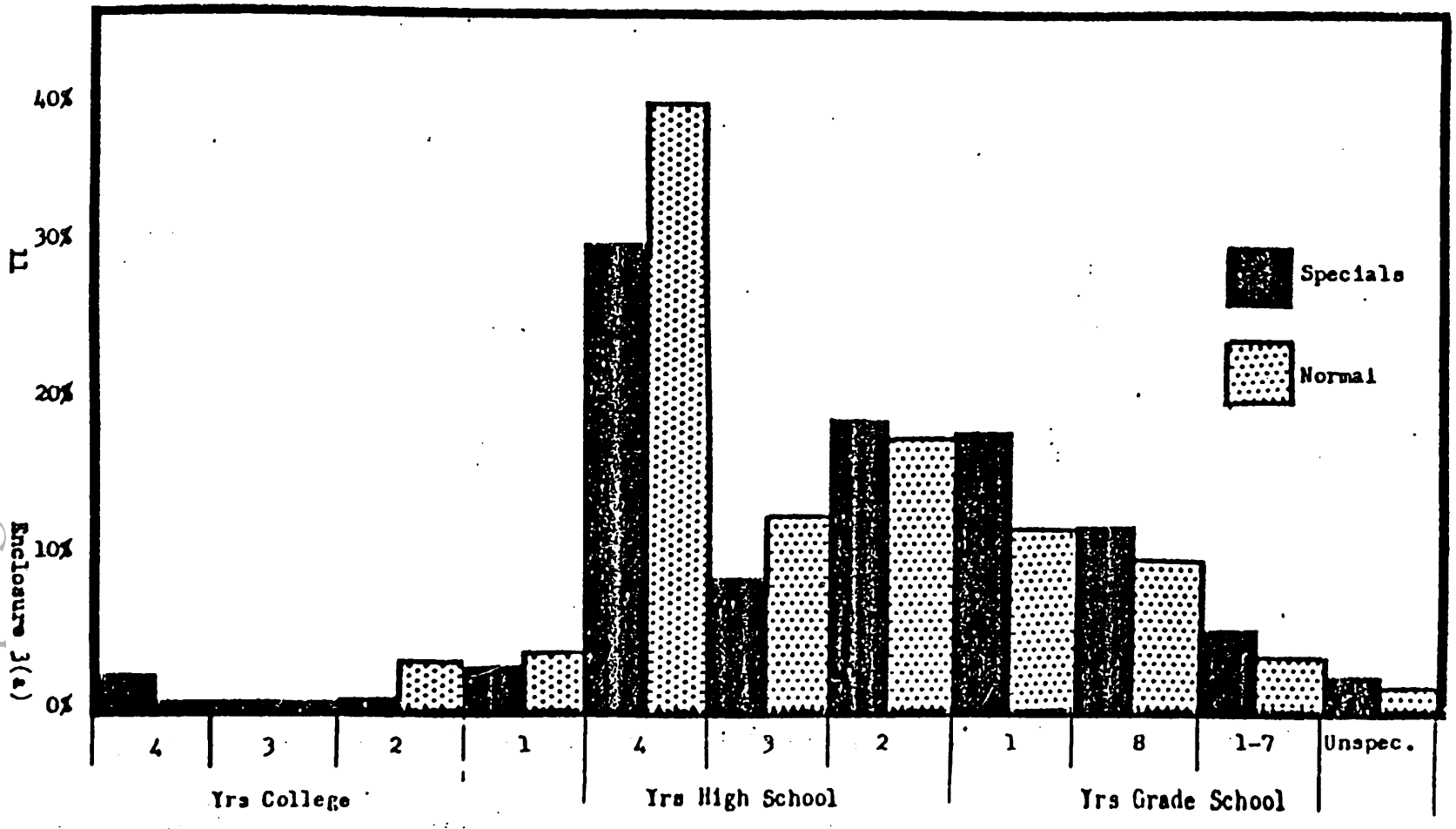
CHART B

EDUCATIONAL LEVEL: DISTRIBUTION BY
NORMAL: FOR NAVAL PERSONNEL ON ACTIVE DUTY AS OF 31 Aug 1955
(FROM PERS A114: SOURCE CES 074-31 Oct 1955)

VALIDITY GOOD



Enclosure 3(a)

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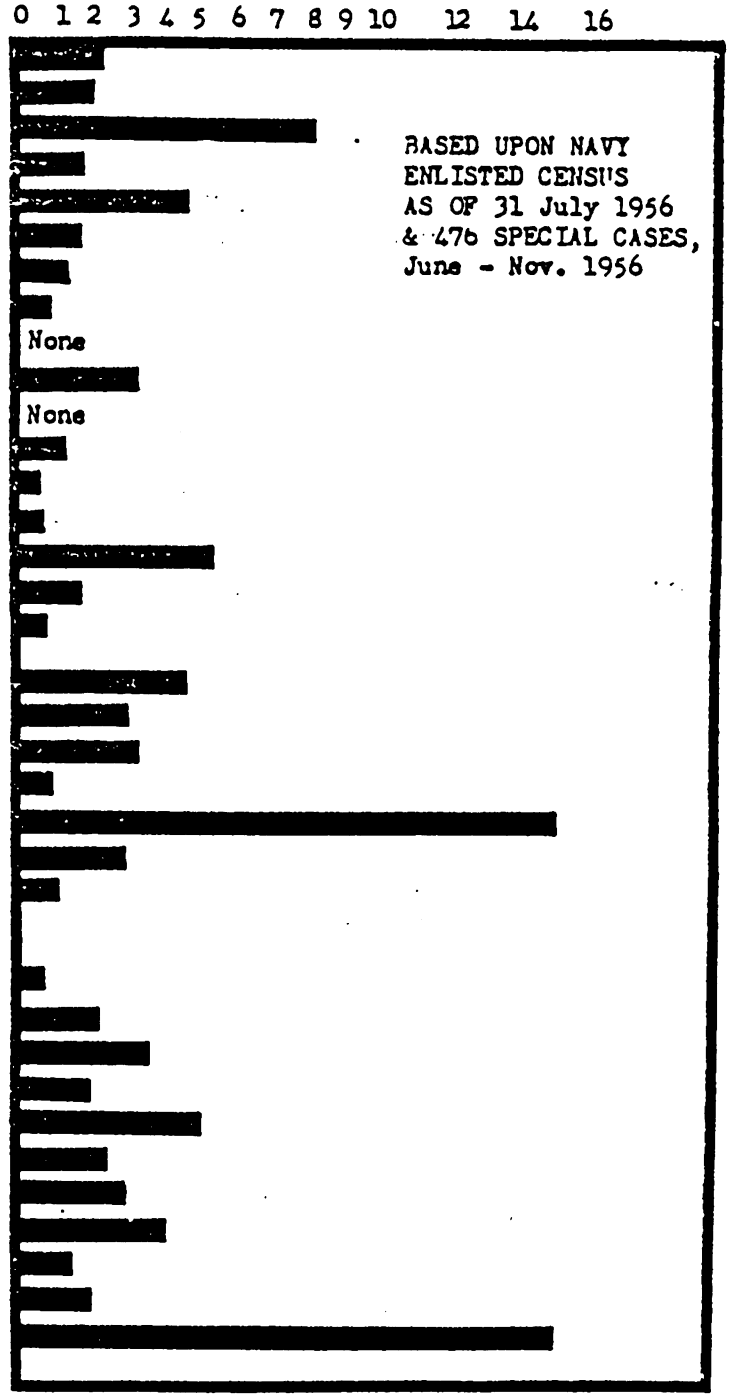
CHART F1

INCIDENCE OF SPECIAL CASES
RATE PER 1,000 PER YEAR BY RATING GROUP
AND BY SELECTED RATES



All Active Duty Pers.
All Males
All Females (Wave)
All Petty Officers & Strikers
All Non-rated (less strikers)
Group I (Deck)
Group II (Ordnance)
Group III (Electronics) ET
Group IV (Prec. Instru)
Group V (Admin & Cler)
Group VI (Misc)
Group VII (Eng & Hull)
Group VIII (Construction)
Group IX (Aviation)
Group X (Medical) HM
Group XI (Dental) DT
Group XII (Steward) SD

Seamen (SN,SA,SR)
Firemen (FN,FA,FR)
Airmen (AN,AA,AR)
Const. Men (CN,CP,CR)
Hospitalmen (HN,HA,HR)
Dentalmen (DN,DA,DR)
Stewards men (TN,TA,TR)

Group	Rate
I	BM
I	QM
V	TE
V	RM
V	YN
V	PN
V	SK
V	DK
V	CS
V	SH
V	JO *

* LIMITED SAMPLE

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CHART F2

DISTRIBUTION BY SIGNIFICANT RATING GROUPS AND NON-RATED GROUPS

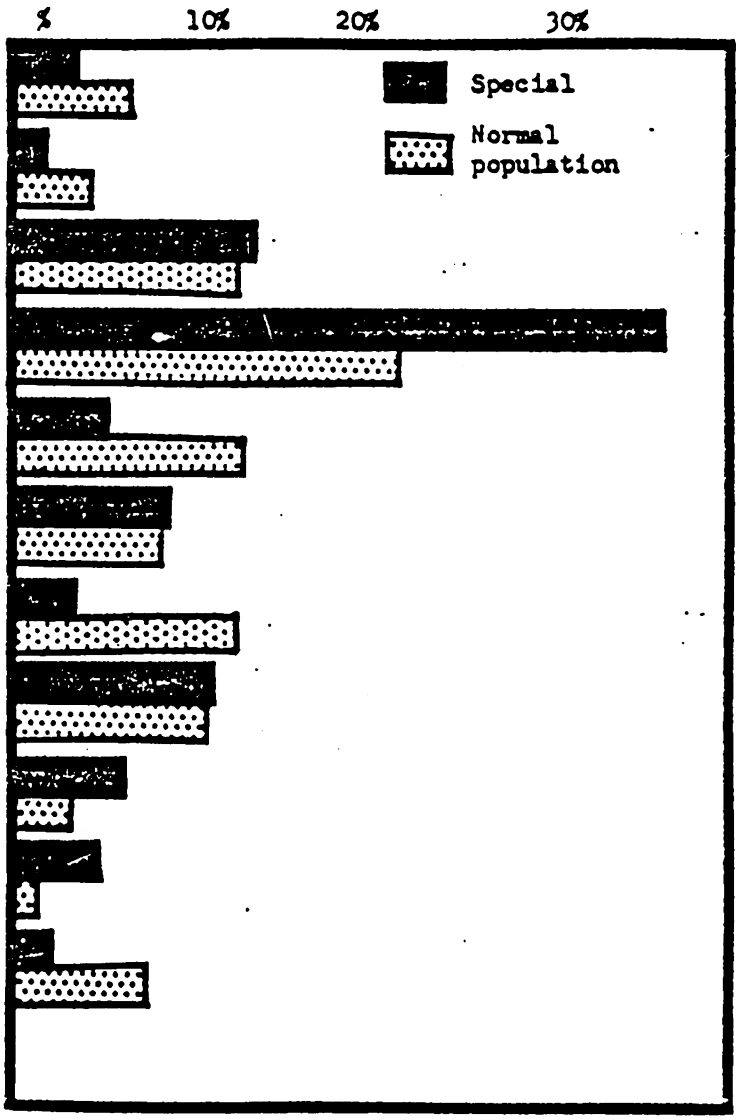

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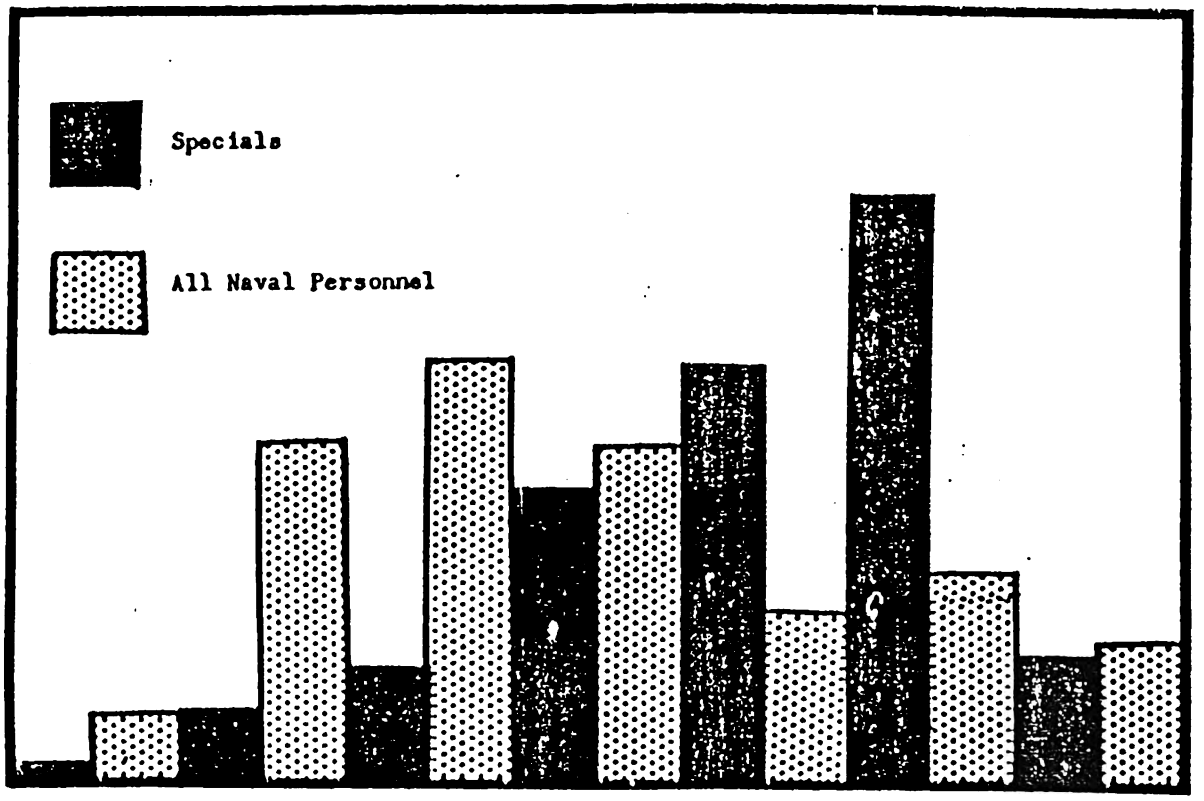
CHART G

DISTRIBUTION BY APY GRADE (RATE)
NORMAL: FROM NAVPERS 15658, July 31 1956, Page 22



Pay Grade	E-1	E-2	E-3	E-4	E-5	E-6	E-7
Rate	CPO	PO1	PO2	PO3	SN,FN,AN. etc.	SA,FA,etc.	SR,FR,etc.

Enclosure 3(a)

139

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CHART H

DUTY STATION

Individual cases processed for sex perversion showed the following distribution, by duty station to which attached at time of offense:

STATION	NUMBER	%
Aviation Service Commands	11	2.31
Fleet Commands/Groups	7	1.47
Fleet Ships	148	31.1
Carriers (CVA, CVS)	26	5.47
BB/CA	33	6.94
DD, DE Types	25	5.25
Minecraft	1	0.21
Escort/Patrol	6	1.26
Amphibious	31	6.52
Auxiliaries	25	5.25
Miscellaneous	1	0.21
Shore Activities	305	64.1
Receiving Stations	48	10.09
Air Stations	57	11.98
Naval Stations	38	7.99
Misc. Shore Stations	43	9.04
Misc. Bureau Activities	39	8.20
Schools (Ships Co.)	40	8.41
Schools (Students)	26	5.46
Recruit Commands	14	2.94
Miscoded	5	1.05
	476	100.00

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CHART H1

DISTRIBUTION BY SOURCE OF CASES (SELECTIVE) VALIDITY FAIR

DUTY STATION
(General Grouping)

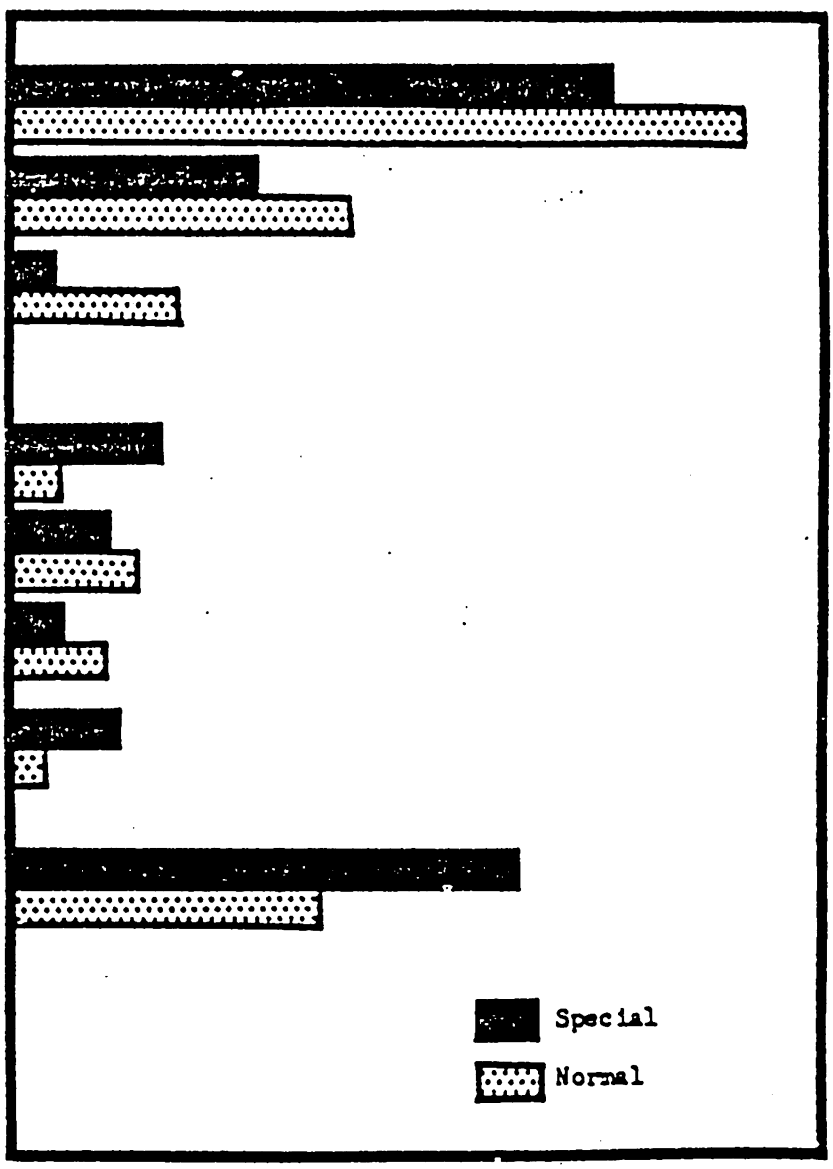

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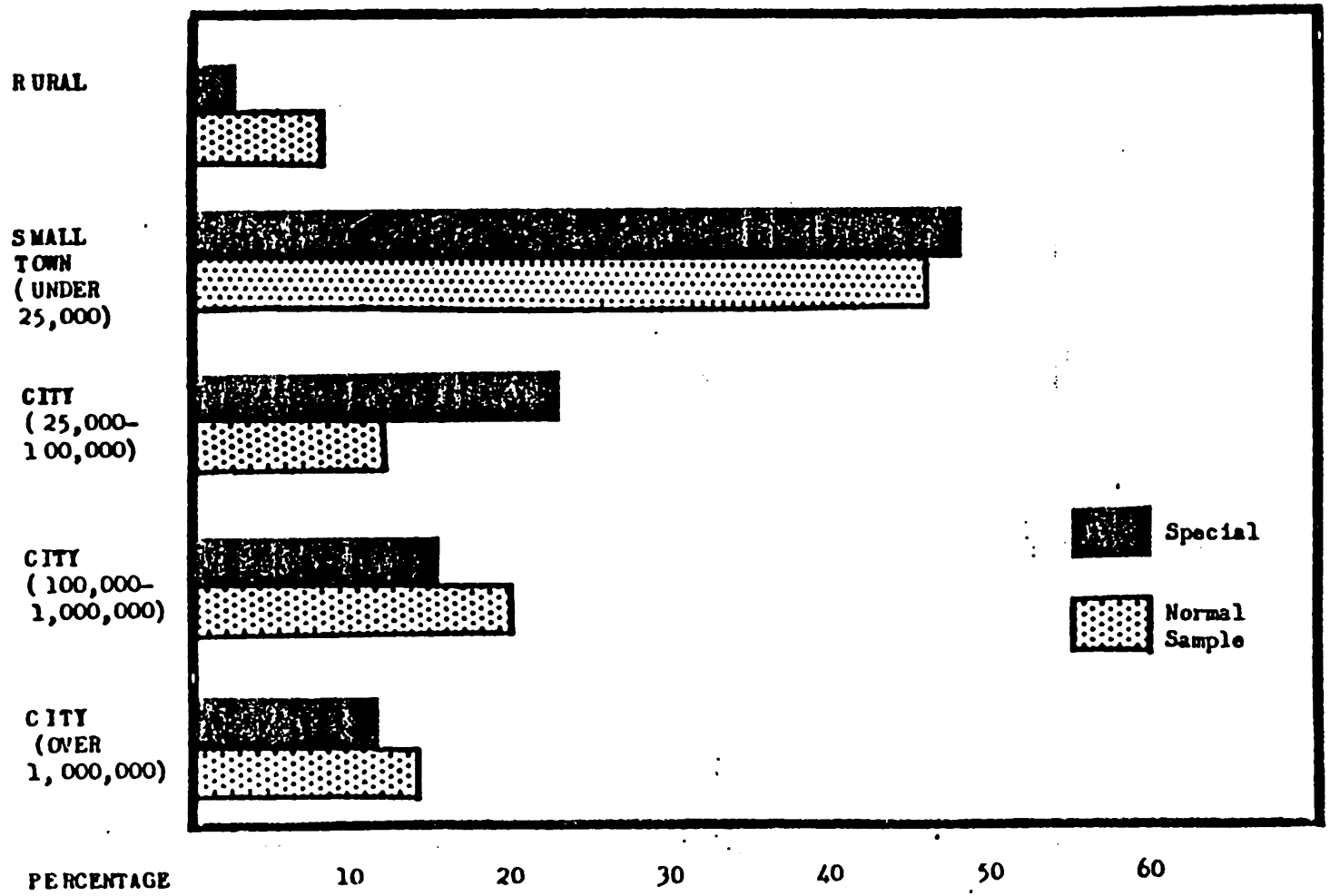
CHART I

PRE-SERVICE ENVIRONMENT: DISTRIBUTION BY
SIZE OF HOME TOWN
NORMAL SAMPLE: GRAPH #11, A STUDY OF ABSENTEEISM: USNRTS, BAINBRIDGE, 1954
N - 4973



17

Enclosure 3(a)

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CHART J

FAMILY BACKGROUND

(Informative - Validity Fair to poor) Service Records and other

Available information indicate the following family background of individuals involved in homosexual conduct.

BACKGROUND	NUMBER	%	% of KNOWN
Unknown or miscoded	114	23.8	-
Stable home, large family	45	9.5	12.5
Stable home, small family	122	25.7	33.7
Broken home (divorce)	110	23.1	30.3
Father deceased	49	10.3	13.6
Mother deceased	26	5.5	7.2
Orphaned	10	2.1	2.7
	476	100.00	100.00

CONCLUSION: INDIVIDUALS HAVING A DISRUPTED FAMILY BACKGROUND MAY SHOW SLIGHTLY MORE TENDENCY TO SEXUAL ABERRATION. NO GOOD COMPARISON NORMS COULD BE FOUND.

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CHART K

JUVENILE RECORD

1. Cases studied showed the following juvenile history, valid to the extent that service records are complete:

RECORD	NUMBER	%
None	400	84.04
Minor	55	11.55
Serious & Waived	15	3.15
Concealed Homo (Fraud)	1	0.21
Miscoded	5	1.05
—	476	100.00

CHART L

MILITARY RECORD

1. Service records showed the following military disciplinary actions, stated in general terms.

RECORD	NUMBER	%
None	287	60.31
Minor Offenses (1-2)	77	16.17
UA Offenses (1-2)	84	17.64
Repeated AWOL	6	1.26
Disciplinary Problem	21	4.41
Miscoded	1	0.21
	476	100.00

CONCLUSION: INDIVIDUALS INVOLVED IN REPORTED SEXUAL ABERRATIONS ARE, ON THE WHOLE, A WELL BEHAVED LOT (OTHERWISE).

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CHART M

RECREATION HABITS

1. Service records of individuals processed for homosexual involvement indicate the following distribution of recreational tastes and habits:

RECREATION	NUMBER	%
None recorded	158	33.3
Sports, Participant	78	16.4
Sports, Spectator	11	2.3
Reading	25	5.2
Movies, TV	1	0.2
Hobby (Photography, model making, etc.)	169	35.5
Hunting, Fishing, etc.	34	7.1
	476	100.00

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CHART N

MARITAL STATUS

(NOT COMPARED)

STATUS	NUMBER	%
Married	40	8.4
Single	425	89.3
Engaged (Claimed)	1	0.2
Divorced/Separated	10	2.1
	476	100.00

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CHART O

DISTRIBUTION BY RACE

RACE	*% SPECIALS	**% ALL NAVAL ENLISTED PERSONNEL
Caucasian	94.75	91.80
Negroid	4.83	6.30
Mongolian	None	0.10
American Indian	0.42***	0.22
Malayan	None	1.58
		100.00

NOTES:

* Based on Sample of 475 cases

** Estimated by Pers A114, 6 Dec. 1956 on population (enlisted on active service) of 591,519

*** Two (2) unrelated cases

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CHART Q

SEXUAL HISTORY

For all cases processed for homosexual or sexually perverse activity during the survey period an attempt to establish the individual's history of aberrant sexual conduct resulted in the following distribution, based upon best available information in statements and reports.

HISTORY	NUMBER	%
1. Professed tendency (Cat. III)	17	3.57
2. First experience (Plausible)	29	6.09
3. First experience (Doubtful)	19	3.98
4. Pre-service experience only	33	6.92
5. Pre-service/in-service experience	347	72.93
6. Continuous experience	17	3.57
7. Confirmed pervert	12	2.52
8. Miscoded	2	.42
	476	100.00

NOTE: Evaluation is somewhat subjective. Item 5 is, however, based upon clear evidence of multiple specific acts.

CONCLUSION:

a. Only 9.66% of individuals processed appear to have had no previous homosexual experience of any nature.

b. However - only 6.09% appeared to pursue homosexuality as a "Way of Life".

c. Over 79% clearly had two or more homosexual experiences in their background.

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CHART R

PSYCHIATRIC EVALUATION

Evaluation of individuals involved in sexual perversion, where stated and whether made by a qualified psychiatrist or by a medical officer, showed the following distribution;

EVALUATION	NUMBER	%
1. True homosexual	85	17.88
2. Probable homosexual	188	39.48
3. Potential (latent) homosexual	169	35.50
4. Not a true homosexual	32	6.72
5. Miscoded	2	.42
	476	100.00

NOTE: These data do not correlate with either Chart "Q" or Chart "T". Conclusion is probably subjectively unrealistic in many cases.

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CHART S

METHOD OF DISCOVERY

1. Involvement of individuals in homosexual acts was discovered by the following means:

SOURCE OF INFORMATION	NUMBER	%
1. Statement of Partner(s)	121	25.4
2. Statement of Third Party	13	2.7
3. Confidential Informant (Unknown)	2	0.4
4. Voluntary Statement (Solicited)	148	31.1
5. Witnessed in Act (Civil Police)	55	11.6
6. Witnessed in Act (SP/MP/AP)	34	7.1
7. Witnessed in Act (Other)	28	6.0
8. Voluntary Admission (Unsolicited)	73	15.3
9. Miscoded/Uncoded	2	0.4
		100.0

2. Conclusions -

a. 28.1% of individuals involved discovered through interviews of parties to the act, in primary investigations.

b. 31.1% of individuals involved in homosexual activity are induced to make voluntary statements by directed follow-up through command and/or ONI.

c. 24.7% of individuals are detected in a homosexual act and apprehended or reported by disinterested parties.

d. 15.3% volunteer an admission of homosexual activity or tendencies.

e. Nearly 60% of all individual cases are developed through follow-up of some 20% of those individual cases detected by disinterested parties.

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CHART T

DISTRIBUTION OF SEXUAL DEVIATIONS

Analysis of cases processed both for homosexuality and for other sexual perversions, in the manner prescribed by SecNav 1620.1 and/or Article 10312, BuPers Manual, show the following distribution of sexually perverse acts, for current offense and, by admission; previously engaged in. The worst of numerous acts involved in any given current offense is shown.

NATURE OF PERVERSION	NUMBER & % ENGAGING IN			
	Current Offense(s)		Previously Engaged in	
	No.	%	No.	%
1. Oral Coition, Active Partner	232	48.74	2	0.42
2. Oral Coition, Passive Partner	193	40.55	154	32.34
3. Mutual Oral Coition-"Soixante Neuf"	7	1.47	5	1.05
4. Anal Coition, Active Partner	12	2.52	52	10.92
5. Anal Coition, Passive Partner	9	1.89	48	10.08
6. Mutual Masturbation	11	2.31	60	12.60
7. Cunnilinguous	2	0.42		
8. Miscoded/Uncoded	10	2.10	9	
	476	100.00	*321	*67.41

(*) Contains duplications

SUMMARY

a. ACTIVE PERVERTS

(1) 241 individuals or 50.62% were involved as active partners in some act of oral coition admitted in connection with the current offense. Only 7 or 1.47% admitted to previous active experience, a figure of doubtful validity.

(2) 12 individuals or 2.52% admitted passive participation in anal sodomy. 52 or 10.92% admitted previous experience in this.

(3) 11 individuals or 2.31% admitted to mutual masturbation in current offense. 60 or 12.60% admitted previous participation in such acts.

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CHART T
(Continued)

b. PASSIVE PERVERTS

(1) 193 individuals or 40.53% were involved as passive partners in current offense of oral coition. 154 or 32.34% admitted previous experience as passive in this act.

(2) 9 individuals (1.89%) were passive in a current act of anal coition. 48 (10.08%) admitted such experience previously.

c. PREVIOUS OFFENSES

(1) Of 476 individual cases recorded, 246 contained evidence of one (1) previous perverted experience, 83 of at least two (2) and 36 cases showed at least three (3) previous acts, different from the act involved in current offense.

CONCLUSIONS

a. Less than 40% of all individuals processed could or did claim only one experience as passive partner in a homosexual act.

b. This analysis of sex history is far too generalized to be of much use in that it fails to account for age at time of previous acts, interval between acts and range (variety) of acts engaged in for each individual.

c. An interesting sidelight derives from data that while current offenses largely (89.25%) involved oral coition, and only 6.6% concerned anal coition or mutual masturbation, the latter offenses were admitted as a previous (and the commonest) experience of 31.52%.

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CHART X

DISPOSITION OF INDIVIDUALS

	NUMBER	%
Undesirable Discharge	428	89.92
Unsuitable (UHC) Discharge - Cat. III	27	5.67
Unsuitable (UHC) Discharge - Medical	1	0.21
Retain	18	3.78
Miscoded	2	0.42
	476	100.00

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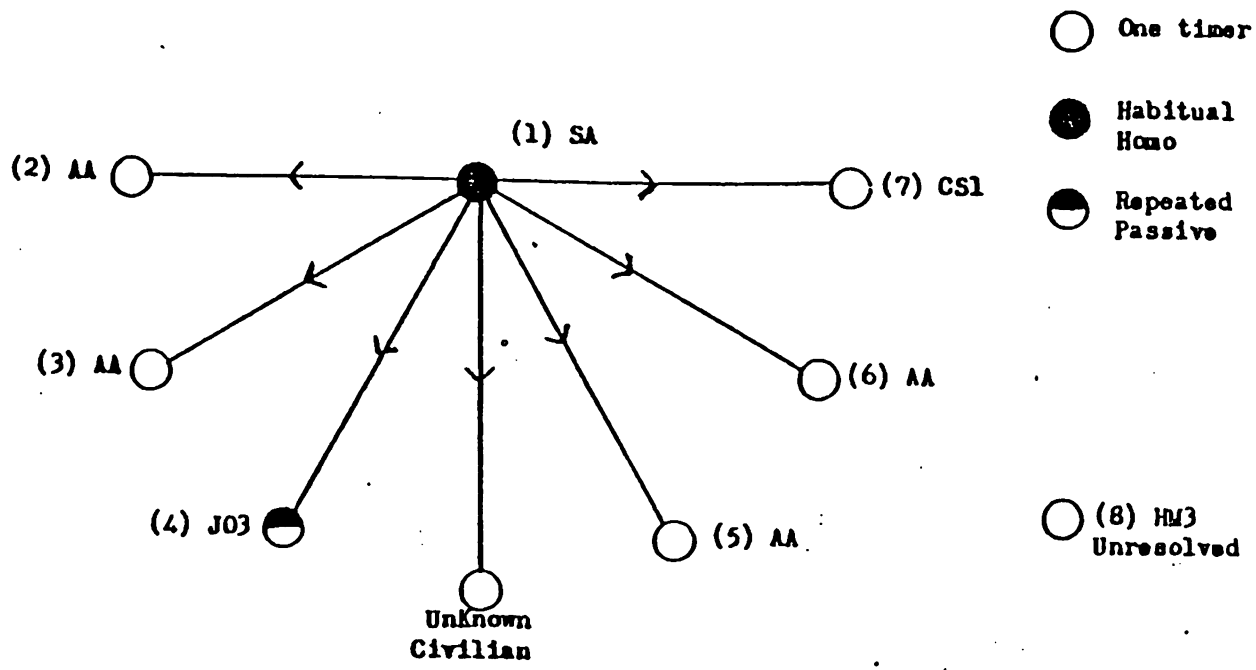
5/15/56

NAAS



Note: (1) and (6) caught by MAA Force in act, in Station Barracks head, 5/11/56

CASE STUDY - HOMOSEXUAL RING #1 - NAVAL AIR STATION (KT)

154

29

Enclosure 3(a)

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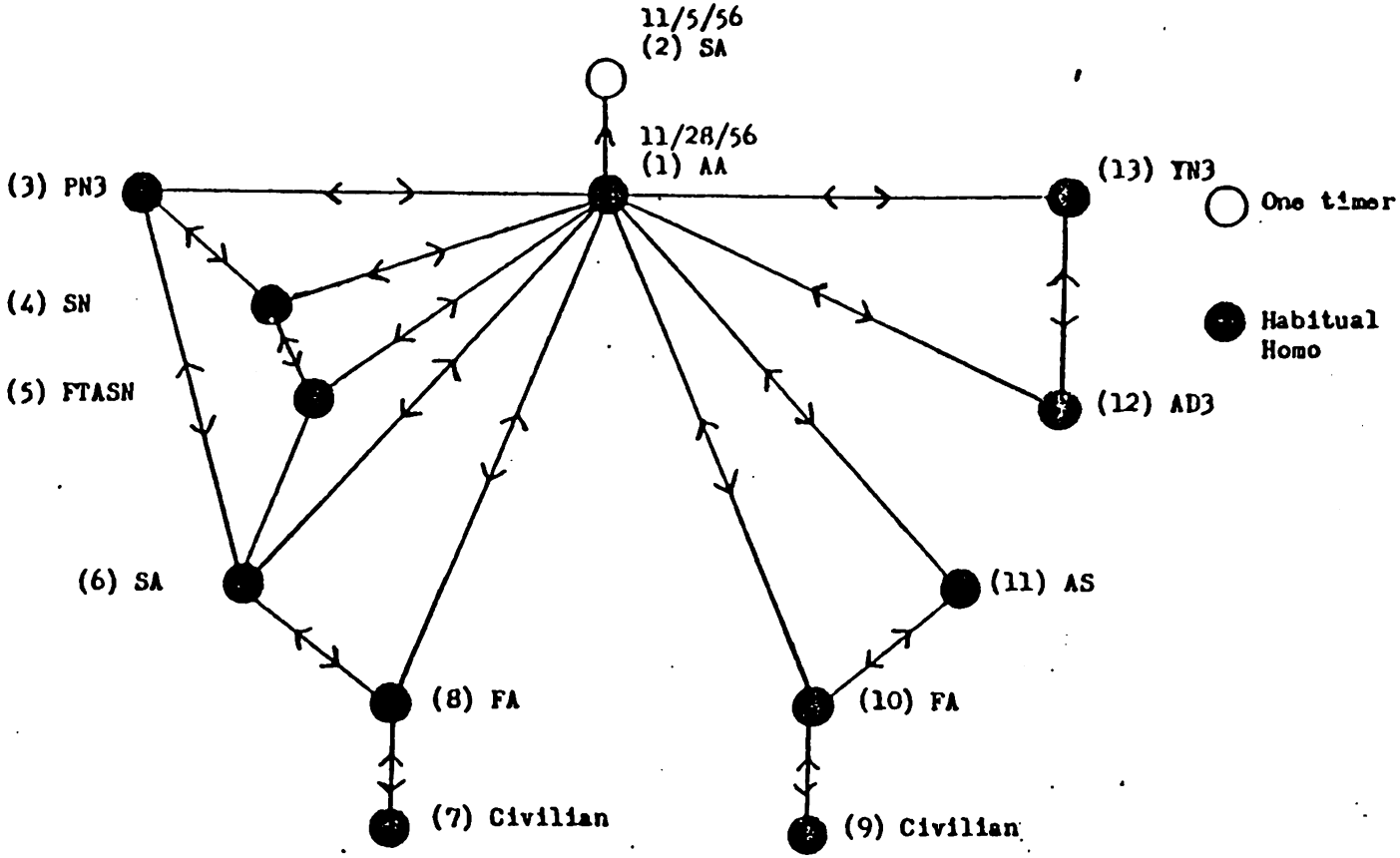
USS (CVS)



Note: Investigation commenced with report of (2) SA.

CASE STUDY - HOMOSEXUAL RING #2 - LARGE CARRIER

30 1553

Enclosure 3(a)

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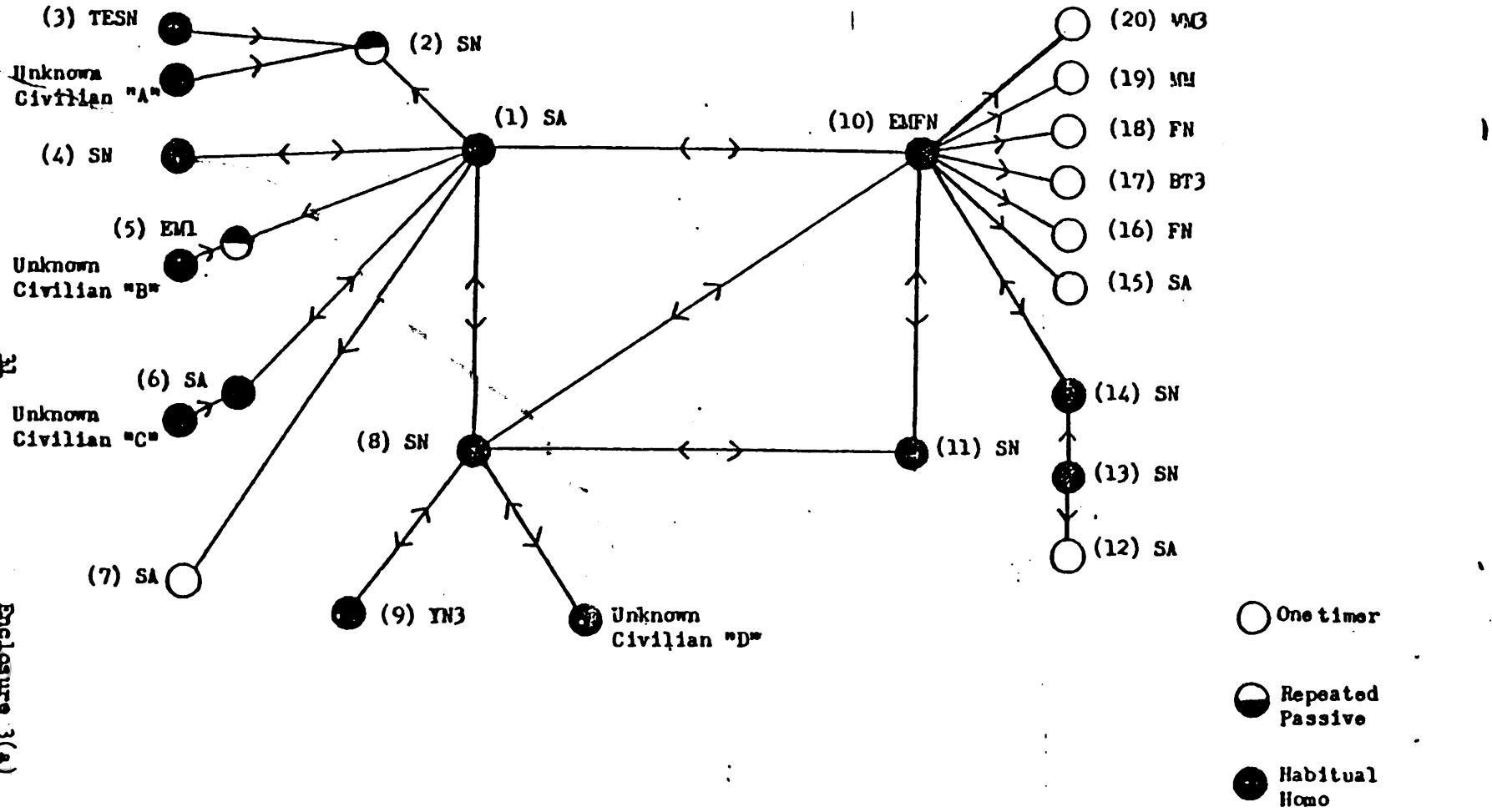
USS (CVA)



CASE STUDY - HOMOSEXUAL RING #3 - ATTACK CARRIER

Enclosure 3(a)

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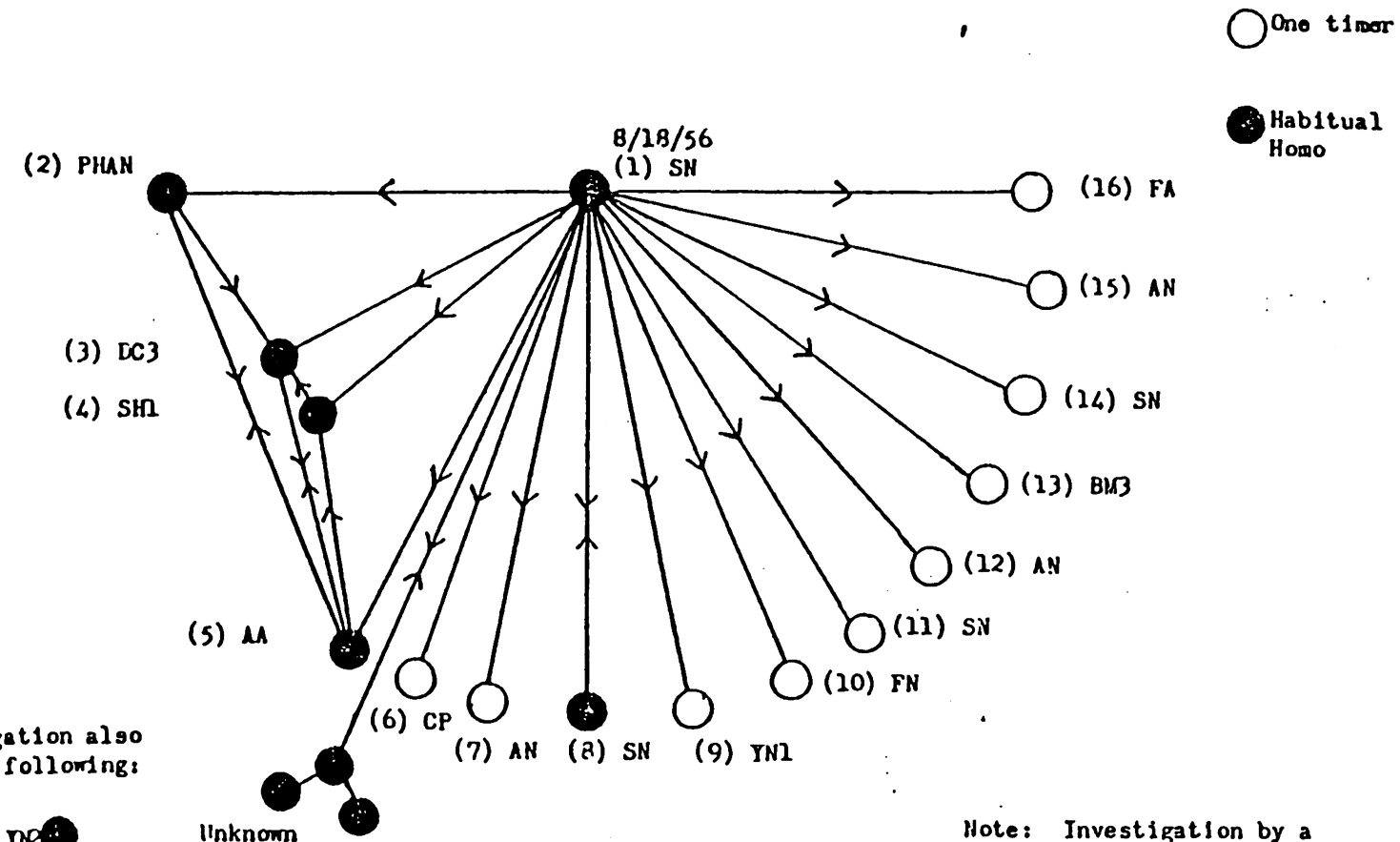

Note: Investigation by a voluntary statement by (2), mentioned (3) Later made a full confession.

CASE STUDY - HOMOSEXUAL RING #4 - NAVAL STATION (B)

157

32

Enclosure 3(a)

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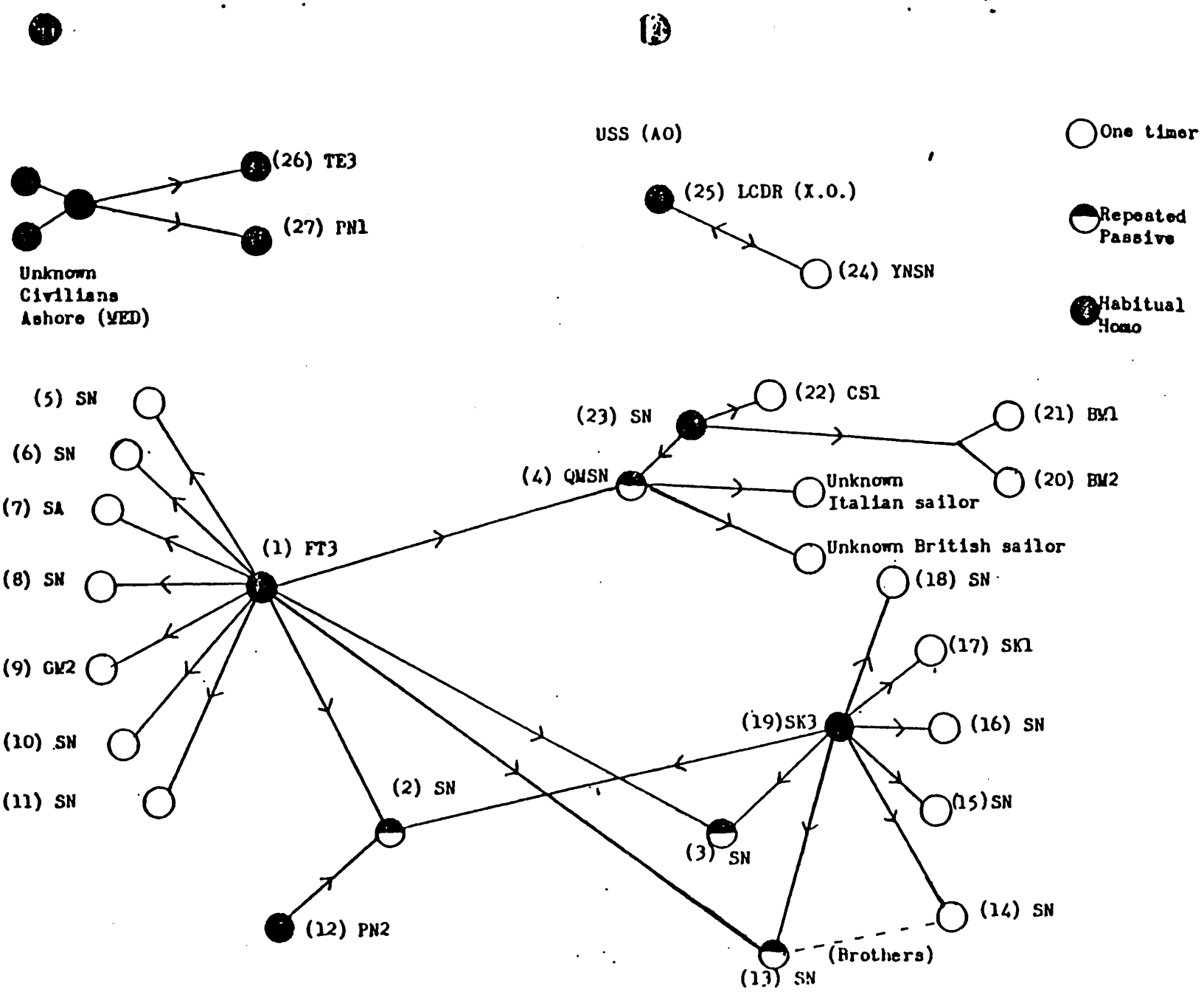

Enclosure 3(a)

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FOR OFFICIAL USE ONLY

PSYCHIATRIC UNIT, U. S. NAVAL TRAINING STATION, SAN DIEGO

STUDY OF CASES OF HOMOSEXUAL BEHAVIOR

Analysis of 40 cases seen in consultation at the Psychiatric Unit, Naval Training Center, San Diego, during the year 1956.

Encl: Tables 1 through 7

A. Findings -

1. Thirty had one year of service or less. . .Sixteen were Seaman Recruits.

2. Eleven were rated personnel of one year of service or more.

3. Thirty-one were twenty-one years of age or under.

4. Of the total number (40), there were twelve whose homosexual contact was singular; that is, twelve individuals had no previous to-service homosexual contact and one or no homosexual contact while in the service. For these twelve, the homosexual contact was in the nature of an experiment or accident. Of these twelve, eight received undesirable discharges.

5. Eleven of the forty manifested a confirmed previous and present homosexual adjustment. Nine of these received undesirable discharges. Two are awaiting court-martial.

6. Seventeen of the forty showed evidence of previous homosexual contact or adjustment and one or no homosexual contact while in the service.

7. Nine of the forty demonstrated associated severe neuropsychiatric disturbance. Two of these nine were discharged for medical reasons (psychosis).

8. These forty individuals comprise twenty-one per cent of the total number (198) of legal consultations made by psychiatrist at the Naval Training Center, San Diego, during the year 1956.

Enclosure 3(b)

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TABLE 1: SHOWS THE LENGTH OF MILITARY SERVICE IN YEARS, OF INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIF. YEAR 1956.

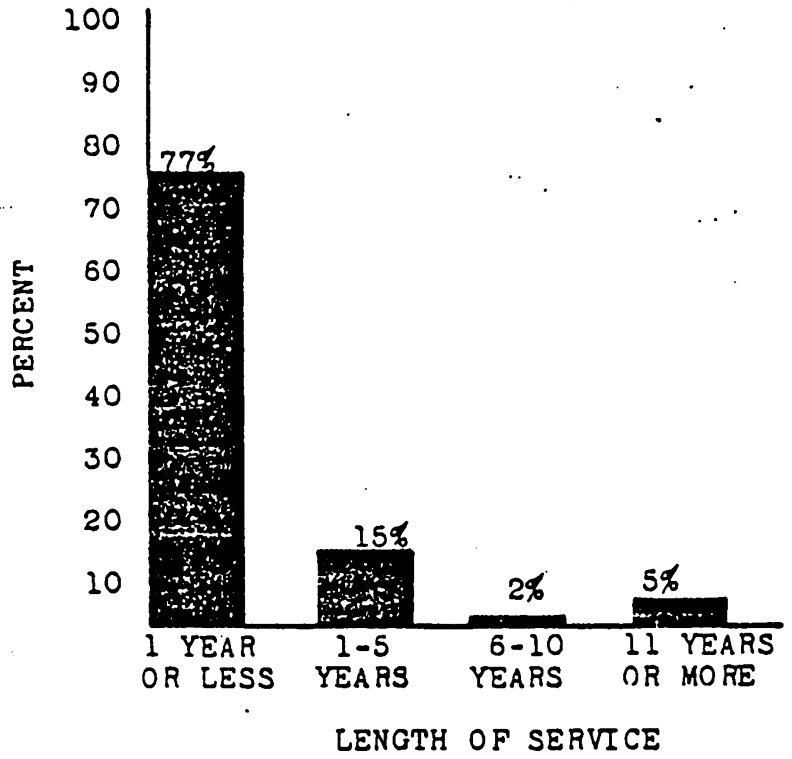

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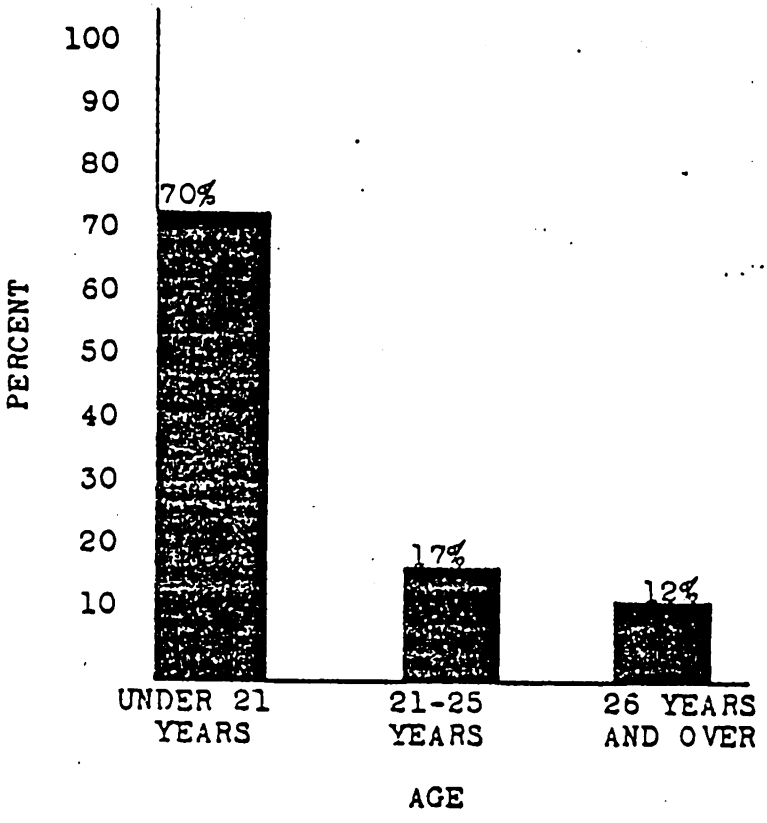
TABLE 2: SHOWS DISTRIBUTION, BY PERCENT, OF AGE OF INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIF. YEAR 1956.



Enclosure 3(b)

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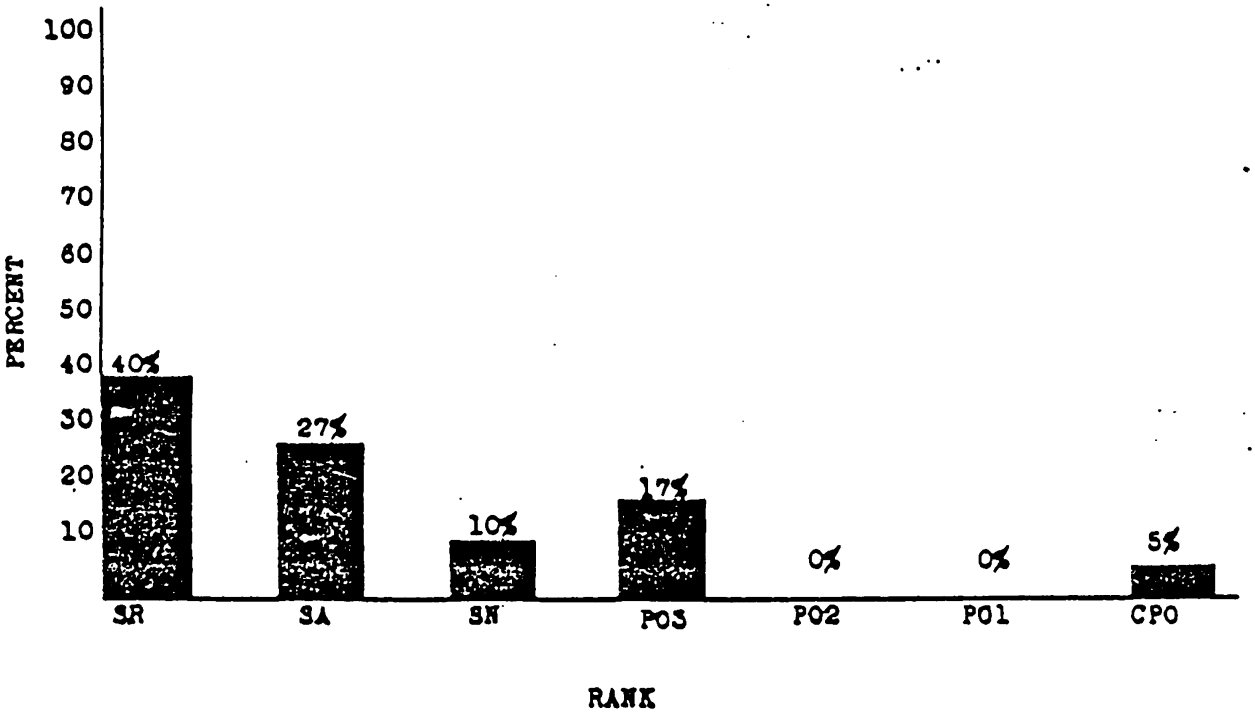
TABLE 3: SHOWS DISTRIBUTION, BY PERCENT, OF RANK OF INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIFORNIA, YEAR 1956.



Enclosure 3(b)

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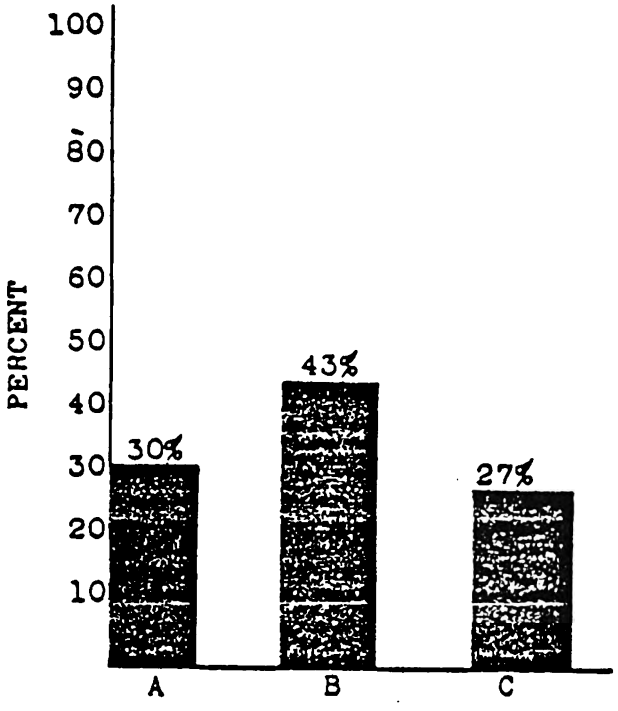
TABLE 4: SHOWS DISTRIBUTION, BY TYPE OF HOMOSEXUAL ADJUSTMENT, OF INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIFORNIA, YEAR 1956.



COLUMN A: PERCENT OF INDIVIDUALS WHOSE HOMOSEXUAL ACT WAS IN THE NATURE OF ACCIDENT OR EXPERIMENT.

COLUMN B: PERCENT OF INDIVIDUALS WHOSE HOMOSEXUAL BEHAVIOR INDICATES DEFINITE HOMOSEXUAL TENDENCIES, BUT NO FIRMLY ESTABLISHED HOMOSEXUAL ADJUSTMENT.

COLUMN C: PERCENT OF INDIVIDUALS SHOWING A CONFIRMED OR WELL ESTABLISHED PREVIOUS AND PRESENT HOMOSEXUAL ADJUSTMENT.

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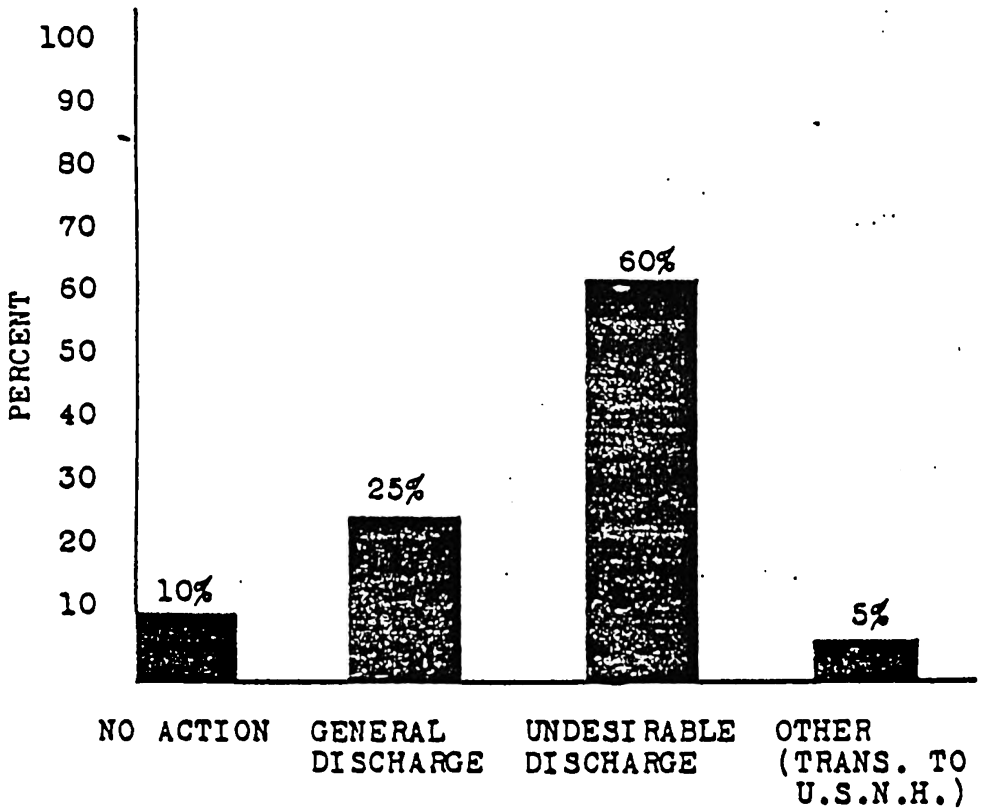
TABLE 5: SHOWS PERCENT AND TYPES OF DISPOSITION OF INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIFORNIA, YEAR 1956.



Enclosure 3(b)

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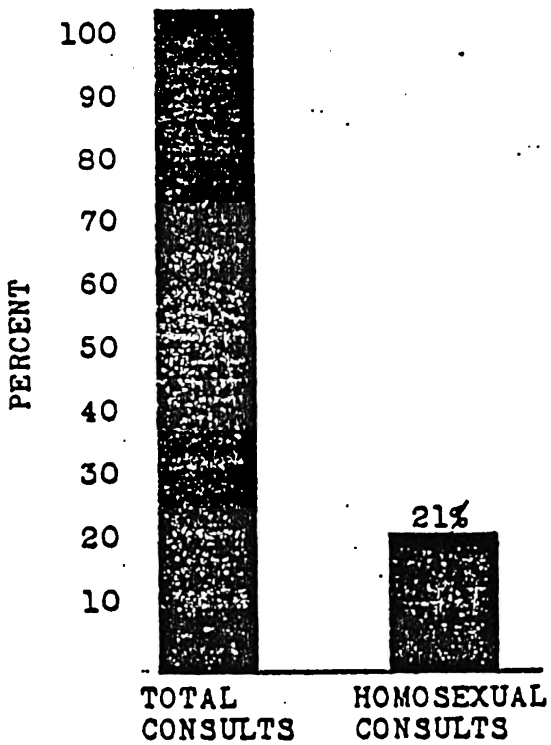
TABLE 6: SHOWS PERCENT OF PSYCHIATRIC CONSULTATIONS CONCERNED WITH HOMOSEXUAL QUESTION, AS COMPARED TO TOTAL NUMBER OF PSYCHIATRIC CONSULTATIONS REFERRED BY LEGAL DEPARTMENT, NAVAL TRAINING CENTER, SAN DIEGO, CALIF. YEAR 1956



Enclosure 3(b)

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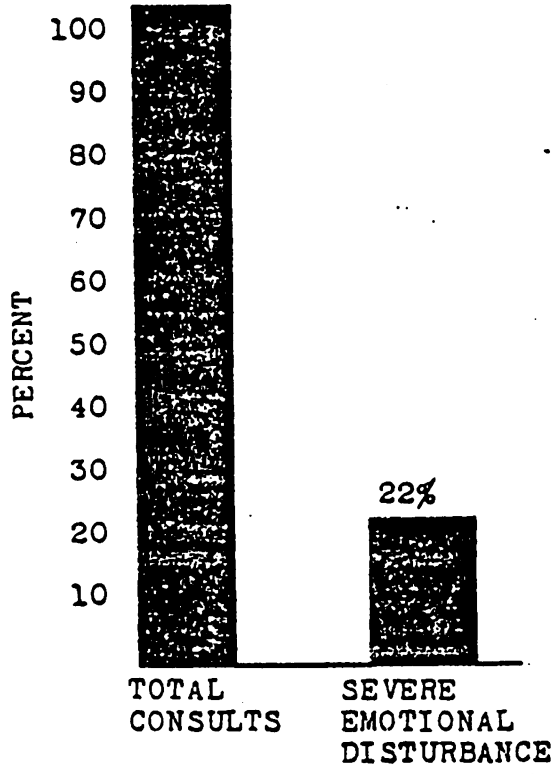
TABLE 7: SHOWS PERCENT OF SEVERE EMOTIONAL DISTURBANCE IN INDIVIDUALS INVOLVED IN HOMOSEXUAL ACTS, NAVAL TRAINING CENTER, SAN DIEGO, CALIFORNIA, YEAR 1956.



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PROPOSED REVISION OF SECNAV INSTRUCTION 1620.1 SECNAV 1620.___

SECNAV INSTRUCTION 1620.___

From: Secretary of the Navy
To: All Ships and Stations

Subj: Policy and procedures for the disposition of cases of homosexuality involving naval personnel

Encl: (1) Sample Resignation (for the good of the service and to escape trial)
(2) Sample Agreement to Accept Undesirable Discharge (for the good of the service and to escape trial)
(3) Sample Resignation (for the good of the service)
(4) Sample Agreement to Accept Discharge (for the good of the service)

1. Purpose. The purpose of this Instruction is to revise and restate the policy of the Secretary of the Navy with respect to disposition of personnel in cases involving homosexual acts or tendencies, and to promulgate the administrative procedures relative thereto.

2. Cancellation. SECNAV Instruction 1620.1 dated 5 June 1953, is cancelled and superseded by this Instruction. All outstanding Bureau and office manuals, instructions, or directives pertaining to the subject of homosexuality are, to such extent as they may be inconsistent herewith, superseded and will be revised in consonance with this Instruction.

3. Objective. It is the objective of this Instruction to promote the highest discipline, moral integrity, and standards of conduct throughout the naval service through a forthright, just and equitable policy with respect to the individual.

4. Discussion. In so far as the individual is concerned, homosexual behavior is a medical problem resulting from faulty psychosexual development. However, the commission of unacceptable and prohibited social acts falls strictly within the legal and disciplinary spheres. Offenders are variously subject to trial under Article 125, Article 134, and other provisions of the Uniform Code of Military Justice; however, it must be determined in each case whether the interests of the service and of the individual will best be served by such action or by administrative measures. In the absence of a major mental disorder of which homosexual behavior is symptomatic, those who have committed homosexual offenses will be held responsible and accountable.

ENCLOSURE (4)

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Each case needs careful, thorough, and individual study to determine the action representing the best attainable balance of the individual, social and service interests involved.

5. Policy. Homosexuality and homosexual behavior will not be tolerated within the naval service. Action will be taken promptly to separate true, confirmed, or habitual homosexuals or those who repeatedly commit homosexual acts. In cases involving individuals not deemed to be true homosexuals but who have engaged in isolated homosexual acts, under extenuating circumstances such as immaturity, ignorance, and occasionally intoxication, wherein notoriety or other factors have not destroyed the usefulness of the individual, final disposition as to retention or separation will be based on the recommendations of a board of officers. In all cases wherein separation is recommended, an opinion will be expressed as to the character and type of discharge to be effected. In rendering reports in consonance with the policy expressed herein, such boards will consider the opinions expressed in psychiatric evaluations, the recommendations of commanding officers, the records of service of the individuals concerned, and all details pertaining to the alleged homosexuality.

6. Applicability. This Instruction is applicable to all personnel of all components of the Navy and of the Marine Corps. It also applies to persons enrolled in Naval Reserve Officer Training Programs as regards acts committed while on cruises or performing other full time training.

7. Implementation. The responsibility for implementation of this Instruction is vested, for members of the Navy, in the Chief of Naval Personnel, and, for members of the Marine Corps, in the Commandant of the Marine Corps. The word "Department" as used in connection with the submission of reports shall be construed to mean either the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate.

8. Classification. For purposes of administrative handling only, the following classification of homosexuality and homosexual behavior is prescribed. (This classification shall be ignored in preparing all clinical evaluations, as well as in other processing of cases which are properly disposed of on strictly medical grounds.):

a. Class I is defined to include cases accompanied by assault or coercion, as characterized by an act in or to which the other person involved did not willingly cooperate or consent, or one as to which

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the consent of the other person was obtained through force, fraud, or actual intimidation, thereby constituting invasion of the rights of another, or any homosexual action with or toward a child or incompetent person, regardless of consent or cooperation.

b. Class II is defined to include all other forms of homosexuality and homosexual behavior.

9. Administrative Procedures.

a. General

(1) Investigation.

(a) Commanding officers, receiving information indicating that persons in the naval service, within their commands, have engaged in homosexual behavior or professed homosexual tendencies, shall inquire thoroughly and comprehensively into the matter, and ascertain all the facts and circumstances of the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. It is essential that all facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained. Commanding officers should avail themselves, as early as and to the greatest extent practicable, of the facilities and experience of naval intelligence offices in dealing with reports and allegations of homosexuality. Investigation of cases of alleged homosexuality requires caution, patience, and forbearance, and premature action should be avoided.

(b) Care must be exercised that all persons involved are completely investigated and reported. Copies of appropriate information shall be expeditiously forwarded to other commands as necessary to complete all cases. All information concerning other homosexuals involved, either civilian or service personnel, will be forwarded to the Department for information and further evaluation.

(2) Preparation for trial by court-martial.

(a) Upon completion of investigation, sample charges and specifications for trial by court-martial shall be drawn, alleging offenses revealed by the investigation.

(b) If the evidence supporting charges and specifications reveals activities falling within the scope of Class I above, appropriate recommendations (normally trial by General Court-Martial) will be

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submitted to the officer exercising general court-martial jurisdiction.

(c) If the evidence supporting the charges and specifications reveals activities falling within the scope of Class II above, the individual shall be confronted with the sample charges and specifications, and shall be offered the following alternatives:

1. Execution of a resignation (officers) or agreement to accept discharge (enlisted) for the good of the service and to escape trial by general court-martial in accordance with enclosure (1) or (2) as appropriate. The accused shall be informed that notwithstanding the type of resignation or agreement to accept discharge which he executes, the Department has authority to effect discharge in higher form if warranted upon completion of Departmental review.

2. Trial by court-martial. In this case forward recommendations for trial by general court-martial.

(d) Nothing in this procedure is intended to preclude the bringing to trial before a court-martial of any individual charged with homosexual behavior, if a superior authority considers that the circumstances render such action essential in the interest of the naval service or the public. Likewise, where personnel have other substantial charges against them for which, in the opinion of the commanding officer or convening authority, they should be brought to trial by general court-martial, such trial should be ordered upon all charges deemed appropriate.

(3) Cases not susceptible to court-martial trial.

(a) If, upon completion of investigation, it appears that one or more persons to whom this Instruction is applicable are properly classifiable under either Class I or Class II above, but that such persons are, with respect to all behavior which brings them under Class I or Class II, not triable under the Uniform Code of Military Justice, then procedures shall be followed as outlined below. Examples of situations contemplated are those in which the individuals concerned have been released from active duty; those in which the behavior in question has occurred during a previous enlistment or during civilian life; and those in which the behavior in question is established solely by the individual's own statement, with no reasonable possibility of developing corroborating evidence. Under such circumstances action will be taken as follows:

1. Advise the individual that his behavior falls

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within Class I or Class II of this Instruction, and that it will be necessary to refer all circumstances to a Departmental board of officers.

2. Advise the individual that he may, if he wishes, submit for the consideration of the board, either or both:

a. A resignation (if an officer) or agreement to accept discharge (if enlisted) for the good of the service (under conditions other than honorable) in accordance with enclosure (3) or (4), as appropriate. He shall be advised that the board may, upon consideration of all circumstances, recommend separation of a higher character, and that, regardless of the ultimate characterization of his separation, no separation document, issued to him upon separation pursuant to his voluntary resignation or agreement, will contain upon its face any statement of the factual reason for the separation.

b. A statement in his own behalf, setting forth circumstances which he feels may militate toward retention or separation under honorable conditions.

3. Take steps to obtain clinical evaluation, as described below, if the individual is on active duty.

4. Submit command comments as in subparagraph (5)(b) below.

5. Forward all papers to the Department.

(4) Clinical Evaluation.

(a) Upon completion of investigation, and after advising the individual of the allegations against him, in cases wherein trial by court-martial is not contemplated, involving persons on active duty, the individual concerned will be referred to a psychiatrist for a complete and comprehensive evaluation in accordance with the latest instructions of the Chief of the Bureau of Medicine and Surgery. Similarly, such an evaluation will be afforded to an individual not on active duty, if he requests it, provided that he shall not be placed in a duty status for the purpose, nor paid any allowance. The facts developed by investigation will be made available to the psychiatrist for use in his evaluation. If the services of a psychiatrist are not readily available to the command, the person concerned, if on active duty, should be ordered for duty to the nearest receiving station, or

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appropriate Marine Corps activity to which psychiatric services are available, to permit such examination, and all papers in the case will be transmitted to the commanding officer of the receiving station or Marine Corps activity concerned, who will conduct all processing from that point on. The clinical evaluation will be provided to the commanding officer and a copy forwarded to the Department via the Chief of the Bureau of Medicine and Surgery for review and recommendations.

(b) In any case involving a person on active duty wherein court-martial trial is contemplated or wherein the command desires to complete processing of the case, the individual may be ordered on temporary additional duty to a facility at which a clinical evaluation can be accomplished.

(5) Referral to Department.

(a) The commanding officer shall submit to the Department a complete report of the case of each person on active duty who is afforded, and who elects, the alternative of resignation or agreement to accept discharge. This report shall include:

1. A full and complete statement from the officer or enlisted person concerned, or his statement to the effect that he does not desire to make a statement.

2. Statements of witnesses.

3. Copy of sample court-martial charges and specifications.

4. Resignation of the officer (or agreement by enlisted person to accept a discharge) for the good of the service and to escape trial by general court-martial in accordance with enclosure (1) or (2), as appropriate.

5. Report of complete psychiatric evaluation.

(b) In addition to the above papers, the commanding officer shall submit full and deliberate opinions and recommendations concerning the case, to include comments on the future value of the individual concerned, to the command and the service, and the effect upon the command of retention or separation. In those cases where the individuals are transferred to receiving stations or Marine Corps Activities, these opinions and recommendations should be expressed,

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both by the commands from which the individuals were transferred and by the commanding officers of the receiving stations or Marine Corps activities to the extent that the individuals have been observed by the commanding officers.

(6) Departmental Action.

(a) Upon receipt of the report of the commanding officer by the Department, it will be forwarded to a board of officers, together with the service record of the individual.

1. The Board will be composed of three officers, senior to the individual under consideration. If the individual is a woman, at least one member of the board shall be a woman officer. If the individual is a member of a reserve component, then a majority of the members of the board shall be reserve officers.

2. The board will review all elements of the case in light of the overall circumstances. Full consideration will be given to the recommendations of the Chief of the Bureau of Medicine and Surgery on the clinical evaluation (copy forwarded separately via medical channels), opinions and recommendations of the commanding officers, and facts in evidence, all in the light of the overall policy set forth by this Instruction.

3. The board will render findings, and opinions and recommendations which will include as appropriate:

a. Whether the individual shall be separated from the naval service or retained therein.

b. If separation is recommended, an opinion should be rendered as to whether to accept any resignation or agreement to accept discharge in the form submitted or in a higher form.

c. Further investigation or psychiatric evaluation if considered necessary.

d. Trial by court-martial.

e. Other appropriate action.

(b) The Chief of Naval Personnel or Commandant of the Marine Corps will review the findings, opinions, and recommendations of the board and take or recommend appropriate action.

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b. Special.

(1) Voluntary Disclosures. In so far as practicable, it is desirable to encourage voluntary disclosures of homosexual activity without undue jeopardy to the naval service or the individuals concerned, when such activity would not otherwise have been uncovered.

(a) One who, due to immaturity, ignorance and (occasionally) intoxication, becomes a party to a non-repetitive isolated act and thereafter suffers regret, remorse, and repugnance, will be encouraged to relate such act to his commanding officer, chaplain, or medical officer. If he executes a complete detailed statement and is deemed not to possess significant homosexual tendencies, he may be retained in the service, if his service record otherwise warrants.

1. The individual will be given a complete psychiatric examination to evaluate his mental health status, personality, and the significance of his behavior, in an effort to determine the degree of his homosexual tendencies.

2. If it is believed that the individual has in fact committed only a non-repetitive isolated act, and does not possess significant homosexual tendencies, and in the determination of his commanding officer his value to the service has not been seriously impaired, he may be retained if his service record otherwise warrants. The results of the psychiatric examination will be forwarded by the commanding officer to the Department via the Chief of the Bureau of Medicine and Surgery for comment, and will ultimately be filed in the individual's departmental jacket.

3. If it is believed that the individual possesses significant homosexual tendencies, he will be separated under applicable provisions of this directive with the type and character of discharge otherwise warranted by his service record.

(b) One who claims to have significant homosexual tendencies, shall be interviewed by a psychiatrist, or, pending the availability of a psychiatrist, by a medical officer, who should determine in so far as practicable whether the individual does in fact possess these tendencies to such a degree that his retention in the service is not warranted.

1. If further action is warranted a complete psychiatric evaluation shall be made.

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2. The commanding officer will forward the papers to the Department with his evaluation and opinion as to whether the individual is falsely claiming to have homosexual tendencies for the purpose of evading further military service.

3. One who is determined to have significant homosexual tendencies under these circumstances will normally be separated with a type of discharge of no lower character than unsuitable. However, one who is determined to have been a confirmed homosexual at the time he entered the service and to have knowingly failed to disclose such fact, may be separated with a discharge as undesirable.

4. If in any case, it is developed that a false claim of homosexual tendencies has been made for the purpose of evading a military service obligation, appropriate disciplinary measures shall be employed.

c. Availability of witnesses:

(1) In order to guarantee the availability of essential witnesses in a subsequent court-martial proceeding, where such are necessary, no personnel shall be separated from the service without prior reference to the Department until the investigation and disposition of other personnel involved shall have been concluded. No person held solely as a witness shall be confined, unless confinement be deemed reasonably necessary for his own protection.

10. Warning of the Individual. In connection with the processing of persons suspected of an offense under the Uniform Code of Military Justice, attention is invited to Article 31 thereof.

11. Expeditious Processing of Cases. Once a person has been confronted with charges or accusations, the subsequent processing will be conducted with the maximum expedition practicable.

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SUGGESTED FORM-RESIGNATION FOR GOOD OF THE SERVICE AND TO ESCAPE TRIAL BY GENERAL COURT-MARTIAL

From: Lieutenant A_____B_____C_____, USN, (USMC), 123456/1100

To: Secretary of the Navy

Via: (1) Commanding Officer
(2) Chief of Naval Personnel
(Commandant of the Marine Corps)

Subj: Resignation

1. I hereby submit my resignation from the Naval Service of the United States for the good of the service and to escape trial by general court-martial, under conditions other than honorable, and request that my resignation be so accepted.

2. I have been informed and understand that if my resignation is accepted for the good of the service and to escape trial by general court-martial:

a. I shall receive separation papers which will state upon their faces that they are under conditions other than honorable;

b. With reference to the type and period of continuous service from which I am so separated, I shall be deprived of valuable veterans' rights and benefits under both Federal and State laws; and,

c. I may expect to encounter substantial prejudice in future civilian life in situations wherein the fact or nature of prior service in the Armed Forces, or the character of separation therefrom, may have a bearing.

/s/ _____
Lieutenant, U.S. (Navy)(Marine Corps)

176

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Enclosure (2)

SUGGESTED FORM-AGREEMENT TO ACCEPT UNDESIRABLE DISCHARGE, FOR THE GOOD OF THE SERVICE AND TO ESCAPE TRIAL BY GENERAL COURT-MARTIAL

From: DOE, John Richard, 123-45-67, (YNSA, USN), (PFC, USMC)

To: Chief of Naval Personnel
(Commandant of the Marine Corps)

Via: Commanding Officer

Subj: Agreement to accept undesirable discharge

1. I hereby agree to accept an undesirable discharge from the naval service of the United States, for the good of the service and to escape trial by general court-martial under conditions other than honorable, and request that I be so discharged.

2. I have been informed and understand that if I am discharged with an undesirable discharge:

a. I shall receive separation papers which will state upon their faces that they are under conditions other than honorable;

b. With reference to the type and period of continuous service from which I am so separated, I shall be deprived of valuable veterans' rights and benefits under both Federal and State laws; and,

c. I may expect to encounter substantial prejudice in future civilian life in situations wherein the fact or nature of prior service in the Armed Forces, or the character of separation therefrom, may have a bearing.

/s/ _____
(YNSA, USN) (PFC, USMC)

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SUGGESTED FORM FOR SUBMITTING RESIGNATION FOR GOOD OF SERVICE, UNDER CONDITIONS OTHER THAN HONORABLE

From: LT. A_____B_____C_____, USNR (USMCR), 123456/1100
123 Fourth Street
Anytown, Washington

To: Secretary of the Navy

Via: (1) Commandant _____ Naval District
(Commanding Officer)
(2) Chief of Naval Personnel
(Commandant of the Marine Corps)

Subj: Resignation

1. I hereby submit my resignation from the Naval Service of the United States, for the good of the service, under conditions other than honorable, and request that my resignation be so accepted.

2. I have been informed and understand that if my resignation is accepted as I have submitted it, the factual cause for separation will not appear on the face of any separation document, but that:

a. I shall receive a certificate of discharge which states upon its face that my separation is under conditions other than honorable;

b. I may be deprived of any veterans' rights and benefits (not including National Service Life Insurance) which may be based on service since my last separation from active duty in one of the Armed Forces;

c. I may suffer prejudice in civilian life in situations wherein current status as a member of a regular or reserve component of the Armed Forces, or the character of my most recent separation from either active or inactive status therein, may have a bearing.

3. I have also been informed that I may make a full separate statement in my own behalf concerning the cause for which my separation is contemplated, and that, notwithstanding the form of this resignation, it is within the power of a board of officers in the Department of the Navy, based upon full consideration of all statements and material submitted by me as well as other matter of official record, to render findings, opinions, and recommendations, respecting a higher character of discharge.

/s/ _____
Lieutenant, U.S.(Navy) (Marine Corps)

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Enclosure (4)

SUGGESTED FORM FOR SUBMITTING AGREEMENT TO ACCEPT UNDESIRABLE DISCHARGE FOR THE GOOD OF THE SERVICE (UNDER CONDITIONS OTHER THAN HONORABLE)

From: DOE, John Richard, 123-45-67, (YNSA, USNR) (PFC, USMCR)

To: Chief of Naval Personnel
(Commandant of the Marine Corps)

Via: Commandant _____ Naval District

Subj: Agreement to accept undesirable discharge

1. I hereby agree to accept an undesirable discharge from the Naval Service of the United States, for the good of the service, under conditions other than honorable, and request that I be so discharged.

2. I have been informed and understand that if discharge as undesirable is effected, the factual cause for separation will not appear on the face of any separation document, but that:

a. I shall receive a certificate of discharge which states upon its face that my separation is under conditions other than honorable;

b. I may be deprived of any veterans' rights and benefits (not including National Service Life Insurance) which may be based on service since my last separation from active duty in one of the Armed Forces;

c. I may suffer prejudice in civilian life in situations wherein current status as a member of a regular or reserve component of the Armed Forces, or the character of my most recent separation from either active or inactive status therein, may have a bearing.

3. I have also been informed that I may make a full separate statement in my own behalf, concerning the cause for which my discharge is contemplated, and that notwithstanding the form of this agreement, it is within the power of a board of officers in the Department of the Navy, based upon full consideration of all statements and material submitted by me as well as other matter of official record, to render findings, opinions, and recommendations, respecting a higher character of discharge.

/s/ _____
(YNSA, USNR) (PFC, USMCR)

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17 [illegible] 57

MEMORANDUM

From: Chief of Naval Personnel
To: Secretary of the Navy

Subj: Report of board to revise policy and procedure for the disposition of homosexuals, comment concerning

Ref: (a) SecNav letter dated 20 March 1957

1. The Chief of Naval Personnel has noted the time, effort, and thought which has gone into the preparation of subject report, and considers it a great forward step in the handling of this age-old problem. In particular it is considered that the preparation of the report has brought about the highest degree of mutuality of understanding, of the subject matter, as between medical and line administrative personnel, that has been witnessed during the current generation at least. The Chief of Naval Personnel is convinced that the report itself will be of inestimable value for years to come, and will be productive of scientific data of perpetual worth.

2. The only portion of this report, respecting which any recommendations are made for modifications or changes, is the proposed new general Instruction, and no change in substance is proposed as to it. The suggested changes in format, language, and procedural details are as follows:

(a) Enclosure (4), Page 1, reword to read: "(4) Sample statement concerning undesirable discharge."

(b) Page 1, Paragraph 1, Line 1; change words "revise and restate" to "promulgate."

(c) Page 1, Paragraph 4, Line 10, change the word "homosexual" to "aberrant sexual."

REASON: This is not extending the directive to cover forms of deviation other than homosexuality, but merely states in effect that if the mental disorder is one of which <u>any form</u> of aberrant sexual activity is symptomatic, then the individual may be dealt with as a medical case, notwithstanding any homosexual offenses.

(d) Pages 3 to 9 break down this very long paragraph 9 into 5 separate paragraphs with following captions:

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9. Investigation.
10. Preparation for trial by court-martial or other disposition. (Not applicable to persons not on active duty.)
11. Cases not susceptible to court-martial trial.
12. Clinical evaluation.
13. Departmental action.

Renumber present paragraphs 10 and 11 as 14 and 15, and revise subparagraphing on paragraphs 9-13.

(e) Page 3, present paragraph 9 a (2) (a): Reword: "If the investigation indicates that the individual has engaged in homosexual behaviour, sample charges and specifications for trial by court-martial should be drawn, alleging offenses revealed by the investigation."

(f) Page 4 present paragraph 9 a (2) (c) 2: Amend to read: "Trial by court-martial. In this case forward recommendations for trial to the officer exercising general court-martial jurisdiction."

(g) Page 5, Paragraph 9 a (3) (a) 2 a: Reword the first sentence as follows: "A resignation, if an officer, for the good of the service under conditions other than honorable, in accordance with enclosure (3) or, in cases of enlisted personnel, a statement in accordance with enclosure (4) . . ."

(h) Bottom of Page 5 and top of page 6, paragraph 9 a (4) (a) and (b) prescribing machinery for obtaining clinical evaluations: Rewrite the fourth and following sentences of subparagraph (a) and all of subparagraph (b) to read as follows:

"If the services of a psychiatrist are not readily available to the command, the person concerned, if on active duty, should be ordered to the nearest appropriate Navy or Marine Corps activity to which psychiatric services are available. In some cases it may be necessary to transfer the individual concerned to that activity, in which event all papers should be transmitted to the Commanding Officer of that activity, who will complete processing of the case. The clinical evaluation will be provided to the Commanding Officer of the activity which will complete processing of the case, and a copy of such clinical evaluation will be forwarded to the Department via the Chief of Medicine and Surgery for review

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and recommendations. (Normally a hospital should not be required to perform any phase of administrative separation processing other than the preparation of the clinical evaluation.)
(b) In any case involving a person on active duty wherein court-martial trial is contemplated, or wherein the command to which the individual is attached will complete processing of the case, the individual may be ordered on temporary additional duty to a facility at which a clinical evaluation can be accomplished.

REASON: As now worded, the proposed directive would require that all homosexuals be sent to "receiving stations" for processing. Technically, the only receiving stations are in coastal cities, where personnel are received from ships. Hence the directive would require that if Naval Air Station Memphis were processing one of these cases, he would have to be sent to Washington, Norfolk, or Charleston, and then perhaps given a railroad ticket back to Memphis, if that were his home, even though Memphis itself was fully facilitated to conduct the processing. Moreover, the receiving stations are not equipped to handle all cases even of homosexuals coming from ships in that port. Carriers and other large vessels normally do their own processing, and would usually require assistance only as regards obtaining a psychiatric evaluation. The text has been rewritten above to indicate that the Command will do its own processing, save in those cases where it is "necessary" to transfer the individual. The word "necessary" contemplates those cases in which the individual is an officer and his continuing presence in the command would be a source of embarrassment; those cases in which the command is a ship or unit about to be deployed; and those cases in which notoriety or strong local feelings may render transfer desirable. The rewritten language eliminates the words "receiving station" in favor of "nearest appropriate Navy or Marine Corps activity." It is considered that these words will be given a common sense interpretation as meaning commands which are facilitated to handle enlisted or officer personnel in a disciplinary status.

(i) Page 6, Paragraph 9 a (5) (a) 5. add following 5 a new subparagraph 6., as follows:

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"6. Indication of disposition of, or action taken to advise other commands concerning, other individuals involved.

REASON: This tends to eliminate correspondence, and at the same time reminds the command concerned that it is his obligation to assure that other commands and services have been advised.

(j) Page 7, Paragraph 9 a (6) (a) 3. a.: Substitute "should" for "shall" in the first line.

(k) Page 13, enclosure (4), amend in the following respects:

(1) Change title to: "SUGGESTED FORM FOR SUBMITTING STATEMENT CONCERNING UNDESIRABLE DISCHARGE."

(2) Change subject to read: "Undesirable Discharge, statement concerning."

(3) Change paragraph one to read: "I have been informed that I am under consideration for an administrative discharge from the Naval service and that such discharge may be a undesirable for reason of unfitness, which would be under other than honorable conditions."

(4) In paragraph 3, Line 3, strike the words: "notwithstanding the form of this agreement."

(5) Add new paragraph 4 as follows: My full separate statement in my own behalf is attached.

/ J. L. HOLLOWAY, JR.
Vice Admiral, U. S. Navy

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON 25, D. C.

IN REPLY REFER TO

A01-kb

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE NAVY
(PERSONNEL AND RESERVE FORCES)

Subj: Comments on Report of SecNav Board for dealing with homosexuals

Ref: (a) SecNav ltr of 20 Mar 1957 to MultAdees same subj

1. Reference (a) referred the report of subject board for comments and recommendations.

2. Inasmuch as the core of the Board's report is contained in its proposed rewrite of the current SecNav Instruction on this subject, comments are restricted to this proposal, as follows:

a. Paragraph 4

(1) First Sentence: If "homosexual behavior" is a "medical problem," it should be processed through medical, rather than disciplinary, channels. To correct this misleading impression, recommend addition of "in some cases" after "behavior" in line 2.

(2) Second Sentence: The phrase "unacceptable and prohibited social acts" is weak and inaccurate. Such acts are more than "unacceptable"; they are immoral. Recommend change quoted phrase to "immoral and illegal acts."

b. Paragraph 5. Line 10: Add "departmental" before "board."

c. Paragraph 8.a. The term "child" is not defined. It is recommended that the definition of the proposed model code (see page 37 of report), i.e., a child is any person 10 years of age or under, be adopted.

d. Paragraph 9.

(1) Subparagraph a (4): The requirement for transfer of a suspect when no psychiatrist is available locally

184

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DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
WASHINGTON 25, D. C.

10 April 1957

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: Report of the Board appointed by the Secretary of the Navy to prepare and submit recommendations for the revision of policies, procedures, and directives dealing with homosexuals

1. Review of subject report discloses that a thorough and comprehensive study has been made of a delicate and most difficult problem. It is believed that adoption of the recommendations of the Special Board that conducted the study will do much to protect the interests of the Navy as well as those of the individual. It is considered that the proposed revision of SECNAV Instruction 1620.1 permits a more realistic handling of these cases on their individual merits; is a definite improvement over the present Instruction; and that its approval and promulgation are greatly to be desired.

2. The recommendation that subject report, if approved, be made available to the Board for Correction of Naval Records for guidance is particularly concurred in as, it is believed, the information contained therein will materially assist the Board in connection with its review of administrative discharges.

SIGNED

F. K. DeWALD

185

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will result in delay and expense, and of even more importance, will result in a division of responsibility from having the case processed by two commanding officers.

(2) Subparagraph a.(6)(2): This provision contemplates that departmental action be held in abeyance pending receipt of BuMed's reviewing action on a copy of the field clinical evaluation. This procedure will inevitably cause delay. Since field clinical evaluation will have been conducted by a psychiatrist, it is not clear what benefit will result from BuMed review prior to final disposition of the case. Conceding that BuMed may disapprove an occasional clinical evaluation by a field psychiatrist, such occasional action is not deemed adequate grounds for a procedure which will delay final disposition of all cases.

(3) Subparagraph b: This paragraph, read separately or in conjunction with the remainder of the instruction, is confusing and ambiguous. For example:

> Subpara 9b(1)(a)2 states that, in certain cases when voluntary disclosure is made, the man may be retained, but fails to set forth who makes the decision to retain. This becomes even more confusing in the case where a transfer is necessary for psychiatric evaluation. Does the first or second commanding officer make this determination; or does the case go to the departmental level for decision?
>
> Subpara 9b(1)(b) speaks of "significant" homosexual tendencies. Who determines whether tendencies are "significant, medical officer, psychiatrist, or commanding officer? If other than a psychiatrist, the word "significant" should be further defined, if possible, to insure uniformity of application. If it is determined that the tendency or tendencies involved are insignificant, who makes the decision as to retention?

This Headquarters is of the opinion that subparagraph 9b concerning voluntary disclosures adds little or nothing to preceding provisions of the directive; in fact, it may mislead and undoubtedly it is susceptible of abuse. It is considered that this subparagraph can be deleted without harm to the remainder of the directive, and it is so recommended. If considered desirable to furnish additional

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guidance in this area, this can be done more satisfactorily and with less risk of confusion, by means of separate Secretarial instructions to departmental boards.

3. Subject to the foregoing comments and recommendations, this Headquarters concurs in the proposed rewrite of the current instruction.

187

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DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

IN REPLY REFER TO
JAG:00:imz
104236
28 MAY 1957

From: Judge Advocate General
To: Secretary of the Navy

Subj: Report of the Board appointed by the Secretary of the Navy to prepare and submit recommendations for the revision of policies, procedures, and directives dealing with homosexuals (Part I)

Ref: (a) SecNav ltr of 20 Mar 1957

1. Reference (a) forwarded Part I of the report of subject Board for comment and recommendation by the Judge Advocate General. Particular attention was invited to the proposed revision of SecNav Instruction 1620.1, enclosure (4) of the report.

2. Analysis of the report generally indicates that the Board has done a thorough and complete job in gathering together considerable data and information on a difficult subject. Necessarily, the various (i.e., military, legal, medical, moral, and ethical) views of the problem cannot each be accepted entirely. There must be some degree of compromise. The recommendations of the Board reflect this concept.

3. The report does not recommend substantial change in the existing basic policy in dealing with the homosexual problem in the naval service. In the words of the Board, the Navy should continue to recognize the necessity of adhering to the policy of general nonacceptance of the homosexual offender as a member of its organization.

4. The Board has found certain deficiencies with respect to the existing directive, SecNav Instruction 1620.1. Recommendations for the elimination of these deficiencies are included in the Board's recommendations and in its proposed revised directive. Of the broad changes, I specifically concur in the elimination as a separate category of the so-called Class III case which has raised considerable doubt and confusion in practical application. I also concur in the Board's elimination of some of the inflexible and rigid features of the existing directive with a view to giving the Commanding Officer more discretion.

5. Comments and recommendations in the following paragraphs are directed to the proposed revision of SecNav Instruction 1620.1 submitted with the report of the Board.

6. Paragraph 8a -- In the definition of assault-type cases, add the words "under the age of 16 years" after the word "child." This change

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will eliminate any possible question as to meaning of the term "child." The definition will conform to that contained in Paragraph 213d(3), MCM 1951.

7. Subparagraph 9a(2) -- It is suggested that the heading read simply "Trial by Court-Martial" in lieu of "Preparation for trial by Court-Martial."

8. Subparagraphs 9a(2)(a), (b), and (c) -- These subparagraphs are concerned with the disciplinary action to be taken in Class I cases and with the procedures for confronting an offender with charges and offering an option of resignation or discharge in Class II cases. Although similar language is used in the present directive, there appears to be no sound reason for requiring "sample" charges and specifications or for the direction of a particular type of court-martial. The same result can be reached merely by reference to the Manual for Courts-Martial. It is recommended that subparagraphs (a), (b), and (c) be revised to read:

> "(a) If, upon completion of investigation, competent evidence reveals activities falling within the scope of Class I above, the procedure outlined in Chapter VII, Manual for Courts-Martial, United States, 1951, should be followed in all respects.
>
> "(b) If competent evidence reveals activities falling within the scope of Class II above, the individual shall be furnished with a copy of charges and specifications and shall be offered the following alternatives: * * *"

9. Subparagraph 9a(2)(c)2 — It is recommended that the sentence "In this case forward recommendations for trial by general court-martial" be changed to read: "Proceed as indicated in Chapter VII, Manual for Courts-Martial, United States, 1951."

10. Subparagraph 9a(2)(d) -- It is recommended that the words "superior authority" be changed to "competent authority," and that the word "general" be deleted from the phrase "general court-martial."

11. Subparagraph 9a(5)(a)3 -- Delete the word "sample."

12. Paragraph 9b — This paragraph covers the subject of "Voluntary Disclosures." That portion of the proposal which announces a Navy Department policy and establishes procedures to "encourage voluntary disclosures" of homosexual activity is deemed to be unwise and would probably be difficult to administer on the command level. In this connection, the individual would be a person suspected of an offense within the meaning of article 31 of the Uniform Code of Military Justice and would have to be warned, as indicated in paragraph 10 of the proposed instruction. Further, the practicability of requiring a determination that the individual

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"suffers regret, remorse, and repugnance" is questionable. It is recommended, therefore, that the introductory subparagraph headed "(1) Voluntary Disclosures" be deleted. Subparagraph (a) immediately following should be revised along the following lines:

> "One who, due to immaturity, ignorance, or (occasionally) intoxication, becomes a party to a nonrepetitive, isolated act, and who voluntarily executes a complete, detailed statement of the incident may be retained in the naval service if (1) he is deemed not to possess significant homosexual tendencies and (2) his service record otherwise warrants.
> * * *"

13. The U. S. Court of Military Appeals has recently found prejudicial error in cases where administrative directives such as the instruction under consideration were read to the court or referred to in the course of the proceedings. It is suggested, therefore, that an additional paragraph to the following effect be included in the proposed instruction:

> "Nothing contained in this instruction shall be interpreted as limiting, in any way, the discretion of members of courts-martial or reviewing authorities in performing their judicial functions. This instruction shall not be referred to in any manner in the proceedings of a trial by court-martial or in the actions of reviewing authorities on those proceedings."

CHESTER WARD

Copy to:
BuPers
MarCorps
CNO (ONI)
BuMed

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DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
WASHINGTON 25, D. C.

IN REPLY REFER TO

BUMED:1:llw
P13-1
11 April 1957

From: Chief, Bureau of Medicine and Surgery
To: Secretary of the Navy

Subj: Policies, Procedures, and Directives dealing with Homosexuals; Comment and recommendation on

Ref: (a) SECNAV ltr to Chief,BUMED re same subject
(b) Report of the Board appointed by the Secretary of the Navy to prepare and submit recommendations for the revision of policies, procedures, and directives dealing with homosexuals (Part I)

1. The following comments and recommendations are submitted as requested in reference (a).

2. It is considered that reference (b) presents an unusually comprehensive, objective, and meaningful evaluation of the problem of homosexuality in the Naval Service. The Board has capitalized on recent factual knowledge which has been accumulated by the medical and social sciences, and the proposed policies and procedures appear to be fully in the best interest of the Naval Service. Further, the report is considered to be a commendable illustration of the manner in which medical knowledge can be profitably utilized in the solution of difficult administrative problems which face the Naval Service.

3. This Bureau fully concurs in the necessity for establishment of additional billets for two psychiatrists and one clinical psychologist at the Naval Station, Newport, Rhode Island, so as to permit inauguration of a formal program of screening Reserve officers entering the service through Officer Candidate School. However, the present austerity program and reduction in medical department billets makes it impossible to provide the necessary billets from this Bureau's managed activities. The addition of these billets is considered to be of such importance, that it is recommended that they be provided from planned unallocated billets or from non-BUMED managed activities, if available. Upon establishment of the additional billets, qualified personnel will be made available for assignment.

4. The establishment of a limited number of pay status billets for psychiatrists and clinical psychologists in Organized Reserve units, as recommended by the Board, would be an important step in the more effective psychiatric screening of Reserve members. The recommendation is fully concurred in by this Bureau, and the necessary inactive duty personnel are available to fill the proposed billets.

5. The recommendations contained in reference (b) that a continuing statistical study be conducted on the problem of homosexuality are concurred in. In

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BUMED:1:lbw
P13-1
11 April 1957

this connection, an active program is now underway to develop the necessary research forms. With the concurrence of the Secretary of the Navy, it is anticipated that the study may be instituted in the near future.

6. The proposed revision of SECNAV Instruction 1820.1, forwarded as enclosure (4) to reference (b), is concurred in by this Bureau with one recommended modification. Para. 9 b (1) (a) 2 of the proposed directive states that reports of psychiatric examination in the case of members who are not separated from the service following investigation of homosexual activity, will ".....ultimately be filed in the individual departmental jacket". It is considered that inclusion of such reports in the member's departmental jacket would defeat the basic purpose served by returning selected one-time offenders to duty. Certainly, such a report would be a deterent to future promotion or assignment whenever individual selection was a factor. It is, therefore, recommended that such reports be filed in a separate file, preferably maintained in this Bureau. Each incoming psychiatric report reviewed under the purview of the revised directive could be checked against this file at the time of the Bureau review. Thus, it would be possible to detect repeated offenders without destroying the career of the one-time offender who is returned to duty.

7. Subject to the modification proposed in paragraph 5 above, it is recommended that subject report be approved.

B. W. HOGAN

Prepared by:
LCDR J. E. RASMUSSEN MSC USN
BuMed, Bldg 2, Room 2214
Extension 66376

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DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.

IN REPLY REFER TO
Op-[illegible]/ml
Ser [illegible]
12 APR 1957

"FOR OFFICIAL USE ONLY"

FOR OFFICIAL USE ONLY

From: Chief of Naval Operations
To: Secretary of the Navy

Subj: Policies, procedures and directives dealing with homosexuals

Ref: (a) SECNAV ltr of 20 Mar 57
(b) Report of the Board appointed by the Secretary of the Navy to prepare and submit recommendations for the revision of [illegible] policies, procedures, and directives dealing with homosexuals (Part I)

Encl: (1) DNI comments and recommendations relative to ref (b)

1. Enclosure (1), containing comments and recommendations of the Director of Naval Intelligence, is forwarded pursuant to the request contained in reference (a).

V. H. Lowrance

By direction

Copy to:
BUPERS
JAG
MARCORPS

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193

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DIRECTOR OF NAVAL INTELLIGENCE COMMENTS AND RECOMMENDATIONS RELATIVE TO REPORT OF THE BOARD APPOINTED BY THE SECRETARY OF THE NAVY TO PREPARE AND SUBMIT RECOMMENDATIONS FOR THE REVISION OF POLICIES, PROCEDURES, AND DIRECTIVES DEALING WITH HOMOSEXUALS

COMMENT:

Under the title "Recommendations" on page 68 of reference (b), it is recommended by the board that the Director of Naval Intelligence initiate a statistical study in coordination with the Chief of Naval Personnel and the Commandant of the Marine Corps.

RECOMMENDATION:

The principal mission of the Director of Naval Intelligence in this field is to conduct investigations and to make those facts developed available to those who must act on such investigative data. Resources to expand this mission by the initiation or participation in a statistical study at this time are not available. The current planning for a 12% cut of personnel further precludes the possibility of preparing statistical studies from investigative data. It is recommended that the statistical study be conducted by the Chief of Naval Personnel and the Commandant of the Marine Corps, unless provision can be made for increasing the assets in the Office of Naval Intelligence to perform this project.

II

COMMENT:

The proposed revision of SECNAV Instruction 1620.1, paragraph 3. a. (1), on page three directs commanding officers to inquire thoroughly and comprehensively into matters of homosexual behavior. This language may be somewhat confusing.

RECOMMENDATION:

Homosexuality is a major violation of the Uniform Code of Military Justice. SECNAV Instruction 5430.13A requires commanding officers to refer to the Office of Naval Intelligence or its field components the investigation of all major offenses under the Uniform Code of Military Justice. It is recommended that the wording of this section be changed as follows:

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"Commanding officers, receiving information indicating that persons in the naval service, within their commands, have engaged in homosexual behavior or professed homosexual tendencies, shall cause to be initiated a thorough and comprehensive investigation into the matter, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. The requirement for referral to Naval Intelligence of such cases for investigation is set forth in SECNAV Instruction 5430.13A. These cases usually will be investigated by Naval Intelligence if there is a prior allegation of substance - not mere rumor or hearsay - and if the case has not been compromised to the extent that successful investigative results are unlikely. Inquiry into cases of alleged homosexuality requires expert and professionally trained investigators, caution, patience and forbearance; premature action should be avoided."

III

COMMENT:

The proposed SECNAV Instruction 1620.—, paragraph 9. a. (5) (a), on page 6 provides for the forwarding of a complete report to the Department by the commanding officer.

RECOMMENDATION:

Naval Intelligence investigative reports are furnished to Naval commands under letter of transmittal requiring their return within thirty (30) days. It is recommended therefore that the following sentence be added to this section after the word "discharge":

"If the investigation is conducted by Naval Intelligence, the Office of Naval Intelligence will forward the complete investigative report to the Department (BUPERS and MARCORPS), including statements of witnesses and of the officer or enlisted man concerned".

IV

COMMENT:

The proposed SECNAV Instruction 1620.—, paragraph 9. a. (6) (a), on page 7 directs that the commanding officer's report and the service record of the individual concerned shall be forwarded to a board of officers.

RECOMMENDATION:

It is recommended that this section be changed as follows:

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"Upon receipt of the report of the commanding officer by the Department, together with any pertinent investigation report received from the Office of Naval Intelligence, these documents together with the service record of the individual will be forwarded to a board of officers".

V

COMMENT:

In the proposed SECNAV Instruction 1620.—, paragraph 9. b. on page 8, voluntary disclosures of homosexual activity are discussed. The Office of Naval Intelligence concurs in the desirability of encouraging voluntary disclosures of homosexual activity. Under the Uniform Code of Military Justice, whether tried under Article 125: Sodomy, or Article 134: Indecent or lewd acts with another, a homosexual act is punishable by five (5) years imprisonment and a dishonorable discharge.

RECOMMENDATION:

It is recommended that the legality of paragraph 9. b. be studied by the Judge Advocate General. As written now, it appears that any of the designated officers to whom such a disclosure may be made may hold out a promise to the individual concerned that he will be retained in the service. Also, individuals liable to severe punishment may be able to take refuge in a voluntary disclosure, and utilize the proposed SECNAV Instruction as a defense to separation. The question of warning an individual under Article 31 of the Uniform Code of Military Justice also has a bearing on this matter. The commanding officer, chaplain or medical officer to whom such a disclosure is made will, under most circumstances, be required to ask some questions. Failure to warn the individual making the voluntary disclosure under the provisions of Article 31 of the Uniform Code of Military Justice will constitute a violation of law and cause a bar to any disciplinary action by trial, if questions are asked. A lenient procedure is particularly recommended for one who due to immaturity, ignorance or intoxication becomes a party to a non-repetitive act. The advisability of such a course is recognized. It has been the experience of the Office of Naval Intelligence, however, that it is a practicable impossibility in any non-investigated case to determine whether the offender has actually committed only the one offense claimed. In summary the Office of Naval Intelligence believes that these cases of voluntary disclosures should be tested by an investigation. Such a course will preclude the possibility of a confirmed homosexual in seeking some immunity by voluntarily admitting participation in only a single, isolated act. It is recommended that the following language be added after the word "warrants":

"After receipt of such a disclosure, either personally or through the chaplain or medical officer concerned, the commanding officer shall cause an investigation to be conducted to substantiate or disprove the statement by the individual".

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DEPARTMENT OF THE NAVY
NAVY DISCHARGE REVIEW BOARD
WASHINGTON 25, D. C.

IN REPLY REFER TO
EXOS:QB (211)
RW:ghm

29 Mar 1957

FOR OFFICIAL USE ONLY

From: President, Navy Discharge Review Board
To: Secretary of the Navy

Subj: Report of the Board appointed by the Secretary of the Navy to prepare and submit recommendations for the revision of policies, procedures, and directives dealing with homosexuals (Part I)

Ref: (a) SecNav ltr dtd 20 Mar 1957, subj: Policies, procedures and directives dealing with homosexuals; request for comment and recommendations

1. In accordance with paragraph 3 of reference (a), recommendations with respect to subject report are:

(a) That the proposed directive be approved as written.

(b) That proposed guidance be issued to the Discharge Review Board.

(c) That the board's report be made available to members of the Discharge Review Board for their edification and general guidance.

Burton B. Biggs

BURTON B. BIGGS

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ASSISTANT SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

4/25/57
C-by ser. c
Ch C.I.E
for info.

MANPOWER, PERSONNEL AND RESERVE

APR 1 5 1957

MEMORANDUM FOR THE SECRETARY OF THE NAVY

SUBJECT: Policies, procedures and directives dealing with homosexuals

The Secretary of Defense has asked me to reply to your memorandum of 20 March which forwarded a copy of the report of a recent ad hoc committee studying the above problem.

As you are aware, this office has for some time contemplated recision of the Forrestal memorandum of 11 October 1949 (referred to in your memorandum) as being no longer entirely applicable. Various attempts to revise DOD policy have generally met with failure to get complete agreement among the Services with respect to the handling of administrative discharges of persons considered "Class II and Class III homosexuals." It is believed that the directive now to be adopted by the Navy is generally consistent with the policies of other Services and that uniform inter-service practices will result. You may therefore anticipate recision of the existing Secretary of Defense memorandum in the near future.

In interposing no objection to the proposed Navy instruction, this Department wishes specifically to point out that detailed study of the committee's report and the experience of the three Services operating under comparable regulations will be evaluated in arriving at a DOD policy. This might conceivably require minor revisions of one or more of the existing Service directives in the future but is not expected to change materially the intent or substantive policy of any.

We would appreciate any comment you may have on the effectiveness of your revised procedures after they have been put into operation. Copy of your report has been retained for further study.

Stephen S. Jackson

Stephen S. Jackson
Deputy Assistant Secretary

198.

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REPORT OF THE BOARD
TO PREPARE AND SUBMIT TO THE SECRETARY OF THE NAVY
RECOMMENDATIONS FOR THE
REVISION OF POLICIES, PROCEDURES AND DIRECTIVES
DEALING WITH HOMOSEXUALS

PART II

Volume A. Copies of directives, instructions and pertinent memoranda.

Volume B. Copies of references and articles dealing with homosexuals.

Volume C. Copies of verbatim testimony.

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PART II

VOLUME A

COPIES OF DIRECTIVES, INSTRUCTIONS

AND PERTINENT MEMORANDA

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REPORT OF THE SECNAV BOARD TO PREPARE AND SUBMIT RECOMMENDATIONS FOR THE REVISION OF POLICIES, PROCEDURES AND DIRECTIVES DEALING WITH HOMOSEXUALS

INDEX

VOLUME A

APPENDICES

1. Precept of Board and enclosure.

2. Head, Neuropsychiatry Branch, Professional Division, Bureau of Medicine and Surgery ltr, Serial BUMED-313-lm of 28 September 1956 and Chief, BUMED endorsement dated 3 October 1956.

3. Chief of Naval Personnel memo Pers-F-ntn, Serial: F-1080 of 14 November 1956.

4. Judge Advocate General memo, AJAG(MJ):et of 3 Dec 1956.

5. Department of Defense memorandum dated 11 October 1949.

6. SECNAV Instruction 1620.1, Subj: Discharge of Homosexuals from the Armed Services.

7. BUPERS Instruction 1620.3, Subj: Information concerning homosexuality.

8. Army Regulations AR635-89.

9. Air Force Regulations AFR 35-66.

10. Comparison of current Department of Defense and Military Departments directives and instructions (Chart).

11. Chronological Development of current policies and procedures dealing with homosexuals (Presentation).

12. Excerpts from Marine Corps Manual.

13. Excerpts from Bureau of Naval Personnel Manual.

14. Memo ASTSECNAV (P&RF) to CNP and JAG dated 19 Nov 1955.

15. Pencilled memo ASTSECNAV (P&RF) of 3 June 1955.

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APPENDICES

16. Procedures of the Board for Correction of Naval Records and Standards and Policies for Guidance.

17. Administrative Regulations and Procedures Governing Navy Discharge Review Board.

18. SECNAV Instruction 5430.13A dated 10 August 1954, Subj: Naval Intelligence investigative jurisdiction and responsibilities.

19. ONI Instruction 5520.15B dated 15 October 1956; Subj: Sexual misconduct; investigation of

20. Excerpts NCPI 45 and 210.

21. Procedures and policies in use in Departmental disposition boards and Departmental review - Presentation.

22. Instructions for Committee on Indoctrination and Education.

23. Samples of standard indoctrination lectures.

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

21 DEC 1956

From: Secretary of the Navy
To: Captain S. H. Crittenden, Jr., USN

Subj: Orders appointing a board to prepare and submit to the Secretary of the Navy recommendations for the revision of policies, procedures and directives dealing with homosexuals

Encl: (1) Specific items of concern

1. A board will convene at the Navy Department, Washington, D.C., as soon hereafter as may be practicable for the purpose of examining the present practices of the Department of the Navy with respect to homosexuals. The Board will prepare and submit to the Secretary of the Navy recommendations for the revision of present Department of the Navy policies, procedures and directives dealing with homosexuals.

2. The board will consist of yourself as chairman and of the following additional members:

Captain George N. Raines, Medical Corps, USN
Lieutenant Colonel C. E. Hinsdale, USMC
Captain George A. Sullivan, USN
Mr. Charles E. Curley

3. The board will be guided in the extent of its study by the comments contained in enclosure (1). The board will determine its own procedure and form of report. The board may call witnesses and, subject to the approval of the Secretary of the Navy, may employ civilian consultants. The Chief of Naval Personnel will provide the necessary clerical assistance.

4. The board's recommendations will be submitted to the Secretary of the Navy on or before 28 February 1957.

ALBERT PRATT
Assistant Secretary of the Navy
(Personnel and Reserve Forces)

Copies to:
CAPT Raines
LTCOL Hinsdale
CAPT Sullivan
Mr. Curley

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SPECIFIC ITEMS OF CONCERN

The Navy's basic objectives in handling homosexual behavior are:

a. to rid the Navy of habitual homosexuals,

b. to provide a deterrent to homosexual activity by naval personnel not habitually homosexual, and

c. to prevent evasion of military service by individuals falsely admitting homosexual acts or tendencies

in order to maintain the discipline, moral standards and fighting efficiency of the naval service.

Within this framework, the Navy must also be concerned with the preservation of the rights of the individual and his chance for rehabilitation as a useful military man or private citizen.

Since the issuance of present directives on the subject, there has been a significant increase in the knowledge of homosexual behavior and treatment. In the light of this increased knowledge, the following specific questions have arisen, on which the board's recommendations are desired:

1. One-time offenders. Should court-martial or administrative discharge be mandatory in all cases, or would reassignment and retention under some form of probation better serve the Navy and the individual in certain cases?

2. Voluntary confessions. Do our present methods of handling the man who, without fear of subsequent disclosure, admits participation in a homosexual act, help or hinder the stamping out of homosexuality in the Navy?

3. Type of discharge. Do our rules on type of administrative discharge have a deterrent effect? To what extent do they inhibit eventual rehabilitation? Can they be liberalized in appropriate cases without disrupting discipline?

4. Treatment of so-called "Class III" offender. Are our current procedures sound in the light of present-day knowledge?

5. Clinical evaluations. Do current reports on individuals under consideration for disposition as homosexuals provide adequate information on which to base a sound decision? If not, can they be improved, and how?

ENCLOSURE (1)

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6. Review procedures. Are they appropriate? Should a psychiatrist be added to the membership of Department review boards in all or certain cases?

7. Responsibility to the civilian community. What is the responsibility of the Navy, if any, to the community when discharging an habitual homosexual without punishment, treatment or identification as such?

8. Screening of applicants for enlistment. Should screening procedures at Recruiting Stations be modified in a more intensified effort to preclude taking into the Navy potential homosexuals?

9. Should women be treated differently than men?

10. SecNav Instruction 1620.1. Should it be revised to reflect recommendations in the areas outlined above?

11. Administrative practices. What practices not covered in SecNav Instruction 1620.1 should be changed? Are instructions to NDRB and BCNR adequate? What further Secretarial guidance, if any, is needed?

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DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON 25, D. C.

IN REPLY REFER TO
Pers-F-ntn
15 Feb 1957

From: Captain S. H. CRITTENDEN, Jr., USN
To: Secretary of the Navy

Subj: Report of Board considering policies and procedures governing homosexuals; request for extension of time for submission of

Ref: (a) Orders appointing a board to prepare and submit to the Secretary of the Navy recommendations for the revision of policies, procedures and directives dealing with homosexuals dtd 21 Dec 1956

1. By reference (a) the Secretary of the Navy directed that the report of the Board appointed by reference (a) be submitted on or before 28 February 1957. The Chairman has been informed that transcription of the testimony before the Board will not be completed before 6 March 1957. It is therefore requested that the date of submission be extended to 15 March 1957 in order to permit careful review of the testimony and orderly completion of the report.

S. H. CRITTENDEN, JR.
Captain, U. S. Navy
Chairman

26 FEB 1957

APPROVED ..... 19...

SECRETARY OF THE NAVY

GARRISON NORTON
Assistant Secretary of the Navy

207

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APP
2

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BUMED-4
3 October 1950

FIRST ENDORSEMENT on memorandum of Head, Neuropsychiatry Branch, Psychiatric Division, Bumed of 28 Sept 1950

From: Chief Bureau of Medicine and Surgery
To: Assistant Secretary of the Navy (Personnel and Reserve Forces)

Subj: Management of Homosexual Behavior among Naval Personnel

1. Forwarded. The memorandum presents an excellent and concise summary of the many intricate problems surrounding the management of homosexual behavior among naval personnel. The opinions and recommendations are concurred in fully.

By direction

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DEPARTMENT OF THE NAVY

Bureau of Medicine and Surgery
Washington, D.C.

In reply refer to
23 Sep 1944

From: Head, Neuropsychiatry Branch, Professional Division
To: Assistant Secretary of the Navy (Personnel and Reserve Forces)
Thru: Chief, Bureau of Medicine and Surgery

Subj: Management of Homosexual Behavior Among Naval Personnel

Encl: (1) Preamble and Ten Commandments on Problems Relating to Homosexuality in the Navy

1. Submitted herewith is a draft of some of the items discussed in the conference of 21 September 1944, concerning present methods of dealing with homosexual behavior among naval personnel, and especially those cases which come to trial.

2. The Navy's objectives are

(a) to rid the Navy of habitual homosexuals, and
(b) to provide a deterrent to homosexual activity by naval personnel not habitually homosexual.

3. In the accomplishment of these objectives the Navy is particularly concerned with

(a) the maintenance of discipline
(b) the protection of vulnerable young men in the naval service
(c) the integrity and fighting effectiveness of the individual crewmember
(d) the impact of Navy action on the civil community we serve.

4. General Comments

A few general observations and recommendations follow, not by way of introduction to the Ten Commandments, but rather as a supplement to them, with the recommendation that those items above with which we might be most curious?

5. Specific Items of Comment

(a) Maintenance of Discipline - How much of a deterrent to homosexual behavior is current punishment? Can they be made more effective? If they are ineffectual, what would the effect be on discipline

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[illegible]

[illegible] ...and how can attitudes in the Navy be promoted? Just how does one ... [illegible] homosexual behavior?

(b) Discussion of so called class III homosexuals - These cases are not "cases" at the investigative stage, but are relatively common. The vast majority of these people are not actually homosexuals. Should they even be in the investigative at all?

(c) Discussion of one-time or casual offenders - In an understandable discharge the proper disciplinary approach to these cases or would some other disciplinary action be more effective? Is the regard given the highly individual nature of these cases?

(d) Recommended action in individual cases considered after the change by commission of a homosexual - What is the Navy's obligation to society and to the individual in these instances?

(e) Homosexual behavior as a manifestation of [illegible] personality - Is the regard given the question of non-psychotic illness adequate? Do McNaughten's rules apply to homosexual behavior or would the Durham decision be a more appropriate guideline?

(f) Safeguarding rights of the individual - Do present investigative methods provide adequate safeguards, such as informing a man of his rights under the law, providing counsel, avoiding duress, etc.?

(g) Final command review - Is the final review adequately implemented by personnel of sufficiently broad and varied experience to guarantee adequate attention in all cases involved?

(h) The undesirable discharge for personal homosexuality not serving overall - Is this the best and most effective method of handling the individual? This discharge amounts to a life sentence and has no corrective or deterrent effect on the individual himself. Does the punishment fit the crime? Does it not in a measure [illegible]?

(i) Inequality of punishment - The undesirable discharge weighs more on individuals in higher social position, such as professional men, and imposes little hardship on those of lower position, such as manual laborers. Is this fair and equitable?

211

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(c) Effect on the individual - What is the long range effect of Navy experience on homosexual activity and future life adjustment? Does it appear to warrant a change in current policy?

(d) Impact on social structure - What is Navy doing to civilian society by discharging individuals as homosexuals, especially when one-time offenders and Class III individuals are included in the group? Have we an obligation to return men to civilian life as fully adjusted as when we received them? What do present procedures do to Navy public relations?

6. Some have suggested homosexual behavior accepted by psychiatrists as:

(a) Abnormal behavior may occur as part of normal psychosexual development in the adolescent period. Estimates of its frequency among the male population as part of normal development vary from ten percent to fifty percent. The homosexual period may be a transitional period to heterosexuality, or it may be the beginning of a lifelong homosexual pattern. Estimates of the number of the adult population falling into this age group vary from one to twenty percent. In the present state of knowledge it is impossible to predict which individuals will pass through the homosexual period and which will not.

(b) Many individuals have overcome their homosexual tendencies by their own efforts, and many psychiatrists have treated successfully those who desired to change their homosexual behavior. Psychiatrists do not claim that all homosexuals can be changed to heterosexuals, but they do claim that many can be changed if they desire to be changed. Between the extremes of exclusively homosexual behavior and exclusively heterosexual behavior is a continuum of varying degrees of bisexuality. Some persons are capable of a heterosexual adjustment only as a compromise because of a strong desire to be married and have children. Some persons are capable of a heterosexual adjustment only as a compromise because of a strong desire to be married and have children. Some persons are capable of a heterosexual adjustment only as a compromise because of a strong desire to be married and have children.

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(d) Homosexuality is not a static entity. Even individual homosexuals may change their behavior with time. Some persons who have been exclusively homosexual in their behavior may become bisexual and eventually heterosexual. Others may move in the opposite direction. Between the ages of puberty and old age there are many changes in sexual behavior. Some persons who have been exclusively homosexual in their behavior may become bisexual and eventually heterosexual. Others may move in the opposite direction. Between the ages of puberty and old age there are many changes in sexual behavior. Some persons who have been exclusively homosexual in their behavior may become bisexual and eventually heterosexual. Others may move in the opposite direction. Between the ages of puberty and old age there are many changes in sexual behavior.

(e) Homosexual behavior is an adaptive reaction to environmental pressures which may include inadequate heterosexual outlets, inability to cope with heterosexual responsibilities, and many psychiatrists have treated successfully those who desired to change their homosexual behavior. Psychiatrists do not claim that all homosexuals can be changed to heterosexuals, but they do claim that many can be changed if they desire to be changed. Between the extremes of exclusively homosexual behavior and exclusively heterosexual behavior is a continuum of varying degrees of bisexuality. Some persons are capable of a heterosexual adjustment only as a compromise because of a strong desire to be married and have children. Some persons are capable of a heterosexual adjustment only as a compromise because of a strong desire to be married and have children.

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212

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Respectfully submitted,

C. N. JONES

Enclosures (2)

(a) Additional recommendations, if any, may be submitted by the individual members to the Secretary of the Navy for consideration by the committee.

(b) Revision of present instructions pertaining to the duties of the committee, if necessary.

(c) Collection of available information on the subject which should be available in the files of the Navy Department or in the files of the Committee on Appropriations (Subcommittee on Investigations) of the Committee on Expenditures in the Executive Departments, the Congress, the Office of Naval Intelligence, the Secretary's Division of Budget and Reports, the Navy Personnel Board, the Board for Correction of Naval Records and the Bureau of Medicine and Surgery. It should be made clear that the committee does not desire to make a complete and exhaustive study of the naval establishment, but does wish to secure such records and information as the committee deems appropriate.

5. If such a committee were appointed, Admiral Jones would appear to be the logical person to be designated Chairman of the committee.

6. The names suggested in enclosure (1) are not necessarily as people to be specifically selected, but as a guide to the composition of such a committee. These names are submitted for consideration only after the decision of a major war policy, i.e., whether we shall rely mainly on land based aviation, or on carrier based aviation, has been made. Enclosure (1) indicates some suggestions for the composition of such a committee. These names are submitted not

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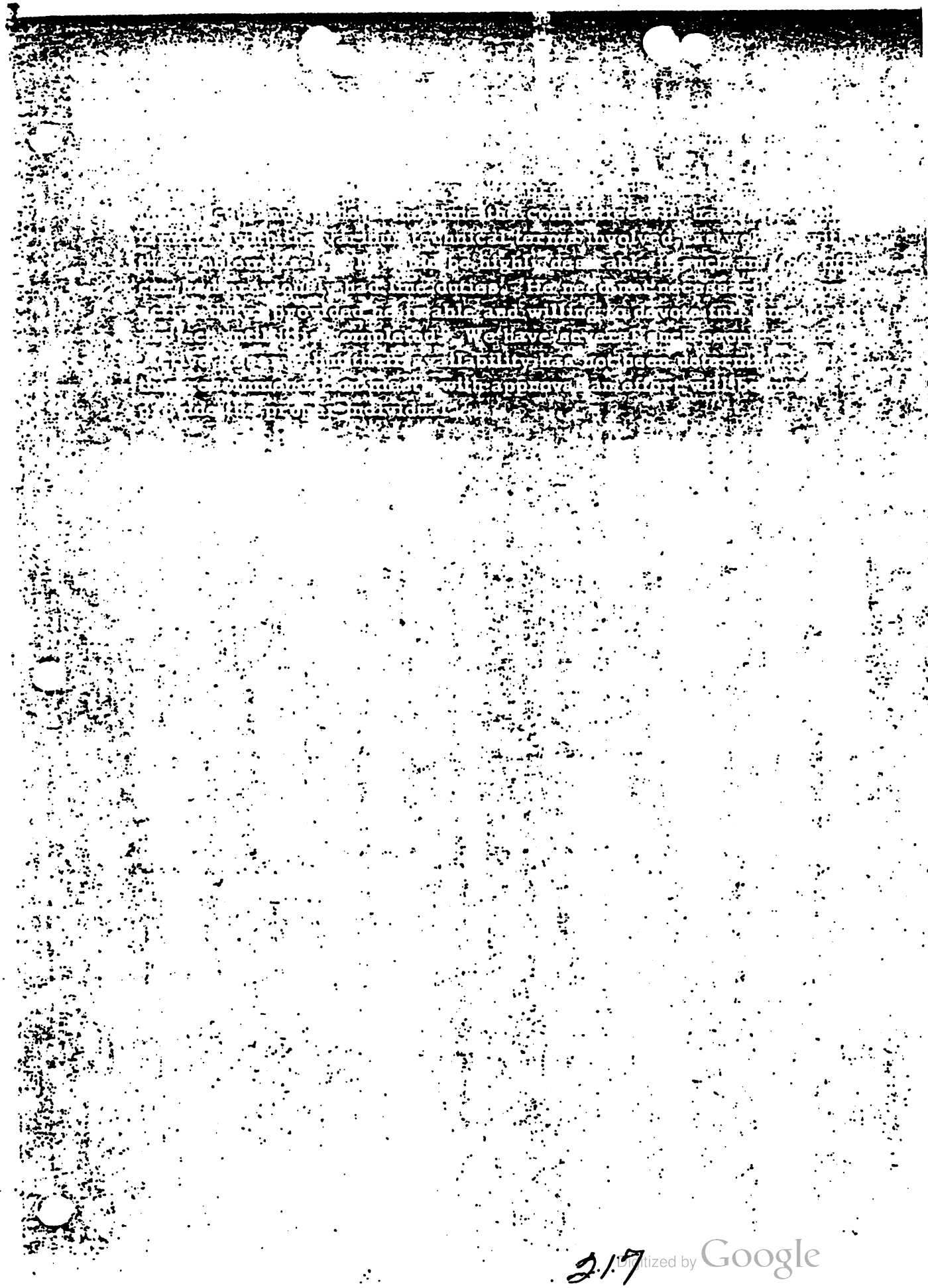

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APP 3

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(A20)

Pers-F-ntn
Ser: F-1080
NOV 1 1

MEMORANDUM

From: Chief of Naval Personnel
To: Assistant Secretary of the Navy (Personnel and Reserve Forces)

Subj: Directives on management of homosexuals, proposed Board for revision of; comments concerning

Ref: (a) ASTSECNAV (R&RF) memo dtd 10 Oct 1956
(b) SECNAVINST 1620.1

Encl: (1) Ltr dtd 28 Sep 1956 from Head, Neuropsychiatry Branch, Professional Division, BuMed to ASTSECNAV (R&RF) with Chief, BuMed end. dtd 3 Oct 1956
(2) CNP comments on the homosexual problem

1. The enclosure to reference (a) which was referred to the Chief of Naval Personnel for comment, is returned herewith. Enclosure (2) contains certain comments of the Chief of Naval Personnel with respect to enclosure (1). It will be perceived upon comparison of the enclosures, in conjunction with the discussion which follows, that there are no major areas of disagreement between the Bureau of Medicine and Surgery and the Bureau of Naval Personnel. Mutually satisfactory operating procedures can be worked out within our own official family, without convening still another high level board to rehash this problem, which, in the overall scheme of personnel administration, occupies only a minor place.

2. The following considerations are pertinent as regards convening a board of eminent civilians, as proposed in enclosure (1):

a. The publicity attending the appointment of prominent persons from civilian life to study the homosexual problem in the Navy would create a wide spread impression that a substantial proportion of Navy personnel are homosexual. Such publicity would not only adversely affect the enlistment and reenlistment rates, but would magnify the program out of all proportion to its actual importance.

b. A board consisting preponderantly of civilian psychiatrists, sociologists, and psychologists would be prone to view homosexuality primarily as a medical and social problem, and neglect or minimize the concurrent vital military aspects of the problem.

c. Changes can be instituted within the framework of the current policy to meet certain of the objections of the medical viewpoint and yet retain the objectives of the military approach.

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3. The Chief of Naval Personnel considers that the current directive as promulgated within and without the naval service is essentially sound. The policy provides tried and effective administrative machinery which accomplishes several purposes:

a. It rids the service of perverts.

b. Through requiring a choice of resignation or trial, it requires commands to develop a court-martial case investigatively before confronting the individual.

c. It protects the individual from unjust action based on idle rumor and suspicion, through requiring sound investigative groundwork prior to confrontation.

d. It protects commands from outside pressure by reason of a lack of discretion for wide departure from policy.

e. It strongly encourages submission of detailed psychiatric or other medical evaluation along with other papers on the case.

4. A close examination of the enclosures reveals that the basic differences concern the dispositions of the one-time homosexual offender who is not deemed by psychiatrists to be a "true" or "confirmed" homosexual. These fall into several categories of circumstances:

Circumstances	Claim
a. Intoxication	Lowered inhibitions, later regretted; taken advantage of
b. Surprise	Unaware of act in process until partially consummated (asleep or stupid)
c. Inexperience (Immaturity)	Did not appreciate or foresee end result of homosexual approach; did not know how to fend off or escape - feared retaliation.
d. Curiosity	Experiment - thrill seeker.
e. Seduction	Experienced homosexual aroused passion.
f. Gang effect	Others in company participated; victim did likewise.

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As to all such cases, existing Navy policy provides in essence that the individual concerned shall be served with sample court-martial charges and permitted to resign, or agree to accept discharge under conditions other than honorable, to escape trial by court-martial. The current Army directive in the premise states: "Individuals who cannot be regarded as true and confirmed homosexuals, but who have been involved in a single act as a result of immaturity, curiosity, or intoxication, when the psychiatric evaluation concludes that they are not confirmed homosexuals and do not possess strong homosexual tendencies, should normally be retained in the service." The current Air Force directive does not contain so forthright a statement, but makes elimination mandatory only of "confirmed homosexuals", those who "habitually commit homosexual acts", and those who have "established or confirmed homosexual tendencies." Also the Air Force directive permits discharge under honorable conditions in any cases of homosexuality.

5. One aspect of the problem of homosexuality which has not been discussed is the matter of military service/hazardous duty evasion. Many persons are inclined to dismiss this matter lightly with the observation that few Americans are either so unpatriotic or so devoid of self-respect that they would perform, or claim to have performed, homosexual acts, in order to avoid or obtain early release from military service. The Chief of Naval Personnel is inclined to take a less idealistic view, however, that the deterrent is actually because of the drastic and lasting penalties attached to separation from the services as a homosexual. Unfortunately, even the psychiatrists have no way of detecting persons who are falsely claiming homosexual tendencies; hence once the penalties or discreditable discharges were removed, anyone desiring to keep out or get out of the service would need do no more than recite a simple formula of acts engaged in beyond the period of applicable statutes of limitations, plus a present nearly uncontrollable desire to resume such activity.

6. Under the current directive it is practicable to provide for increased flexibility in the administration of the policy concerning homosexuals without recourse outside the Department of the Navy. This is possible since existing policy requires review of all cases by boards of officers at Departmental level. This course is considered preferable to that espoused in the basic memorandum. To this end the following is suggested:

a. Continue present policy with respect to the "habitual homosexual" and persons who, willingly and while in full possession of their faculties, commit a homosexual act as the active partner.

b. Convene an Ad Hoc Secretarial Board consisting of representatives of the Chief of Naval Personnel, Chief of Bureau of Medicine and Surgery, and Commandant of the Marine Corps to:

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Ser: F-1080

(1) Review and recommend types of cases which should be considered for characterization of discharge in a higher type; i.e. "under honorable conditions" vice "under conditions other than honorable."

(2) Review and recommend types of cases which might be disposed of by reassignment and retention under some form of probation.

c. Promulgate the approved recommendations of the foregoing board to the Chief of Naval Personnel and Commandant of the Marine Corps as guidance for the Departmental Review Boards.

d. Consider directing that a psychiatrist serve as a member of the appropriate Departmental review board in every case other than those involving obviously confirmed or habitual homosexuals. In this connection it should be further directed that whenever the opinion of the psychiatrist is at variance with the approved recommended action, the case be transmitted to the Secretary for concurrence prior to effecting the action.

(1) It is considered that for this procedure to be effective the Chief of the Bureau of Medicine and Surgery must initiate appropriate action to improve the quality of reports of clinical evaluations of persons under consideration for disposition as homosexuals.

e. It is further recommended that the Secretary reaffirm the original intent of the directive that the word "psychosis" is to be interpreted in the strictly medical sense and is not synonymous with "insanity" in the legal sense, and disavow the M'Naghten criteria in the administrative processing of homosexual cases.

Very respectfully,

/J. L. HOLLOWAY, JR.
Vice Admiral, U. S. Navy

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COMMENTS ON THE HOMOSEXUAL PROBLEM

1. The Chief of Naval Personnel being responsible for the effectiveness of the Navy, personnel-wise, is constrained to so direct personnel policy and administration to produce the maximum in integrity, moral courage and professional ability in the personnel of the Navy. Not only must the personnel policies be such as to attract the highest type of youth to a professional career in the Navy, but they must also promote the highest discipline and proficiency once in the naval service. The problem is threefold:

a. Procurement. To attract the most capable and highly motivated youth to service in the Navy, there must be assurance of a policy which offers an attractive career and guarantees association with personnel of unquestionable morals and ideals. Parental advice and consent play an enormous part in the success of the voluntary status of the naval service. Any program which fostered the thought that the Navy did not deal forthrightly with moral transgressions would immediately be followed by a reduction in the caliber of these volunteers.

b. Indoctrination and training. Every effort is expended on the indoctrination and career training of prospective and present naval personnel. This effort is directed not only to produce and increase the effective usefulness of the individual in particular specialties, but also to guide him from the moral pitfalls abhorrent to the public and service alike, and to make him aware of the consequences of immoral practices.

c. Maintenance of fighting efficiency. The fighting efficiency of our personnel is dependent not only on professional ability, but also on the quality of discipline and morale. The effect of individual behavior, or misbehavior, on others in the close confines normal to service life is always of deep concern. So too is the effect of official action, or inaction, with respect to these behavior patterns. Any weakness not eradicated will have an indelible adverse effect on the group.

It follows therefore that the outlook of the Chief of Naval Personnel must be directed toward the effect of the homosexual incident on the group while, quite naturally and properly, psychiatrists are inclined to view the matter clinically and from the standpoint of the individual homosexual, who may be a victim of circumstances beyond his control, and often emotionally ill.

2. In the overall scale of manpower and personnel problems of today, homosexuality is nearly at the bottom in order of importance from the standpoint of both quantity and quality. The number of detected and

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eliminated homosexuals has never exceeded .75% of active duty strength, and any representative grouping of homosexuals so separated will exhibit only the normal bell curve of intelligence and achievement test scores.

3. The following comment is advanced concerning specific points raised in paragraph 5 of enclosure (1). (Paragraphing is the same as in enclosure (1):

(a) Maintenance of Discipline. It is recognized that the behavior of confirmed homosexuals is compulsive in nature, and that no penalties, however drastic, are going to pose effective deterrents as to them. As to persons nearer the heterosexual pole of the psychosexual continuum, however, a stern policy tends to discourage current experimentation along homosexual lines, to encourage concealment and suppression of past experimentations along homosexual lines, and to encourage heterosexual associations required for social acceptance in the service group. All of this is believed desirable for the protection of adolescents against themselves; prompt separation with stigma of overt homosexuals constitutes the best protection of adolescents against extrinsic corruption. The question, as to how disruptive to discipline is homosexual behavior, cannot be answered. The service attitudes concerning homosexuality are submitted as being fair reflections of prevailing national attitudes, to which homosexuality is perceived as being abhorrent. If this is correct, then condoning homosexual practices would be similarly disruptive to discipline with condonation of theft or manslaughter. Our mores being as they are, all are perceived as being disruptive to discipline.

(b) Disposition of so-called Class III Homosexuals. This class is comprised of, (1) persons who have homosexual tendencies but have not committed acts; (2) persons who have committed homosexual acts prior to coming into the service or during a previous enlistment, hence are not now subject to court-martial trial; and (3) persons whose homosexual acts are not "provable", e.g., one which can be established only by an individual's statement, requested without prior warning pursuant to Article 31(b), UCMJ. The adjective "rare" as used was intended to apply only to the first category, i.e. persons confessing or admitting tendencies, absent any acts whatsoever. True, as the enclosure points out, the other categories under Class III are not so rare. Issue is taken, however, with the statement that the "vast majority of these people are not actually homosexual." Actually, the vast majority are homosexual, but for one reason or another cannot be convicted before a court-martial of sodomy or lewd and lascivious acts or attempts. This class should definitely be in the directive as the means of taking care of the individual who is falsely claiming tendencies in an effort to evade service or hazardous duty, if for no other reason.

(c) Disposition of one-time or casual offenders. This is perceived as the real bone of contention, and is treated in the covering memorandum.

(d) Retroactive action in cases of individuals implicated after discharge by confession of a homosexual. It is assumed that the specific

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situation envisioned is one wherein Seaman A, in giving a statement in connection with investigation of his alleged homosexuality, mentions an act which he committed some months ago with Seaman B. It develops, upon further investigation, that Seaman B has either been (1) honorable discharged or (2) released from active duty. The enclosure asks, "What is the Navy's obligation to society and to the individual in these instances? In the first instance, where the man's relationship with the Navy has been completely severed, there is nothing the Navy can or should do beyond "flagging" B to guard against reentry into the Navy, if possible, and to assure that he will be discharged as a Class III homosexual if he does manage to reenter the service at a later date. In the second instance, where B continues a member of the Naval Reserve or of the Regular Navy in retired status, he is proceeded against for administrative discharge (other than honorable) or discharge in lieu of trial, respectively. Discharging him other than honorably from inactive status does not bar any veterans' rights or benefits, and probably will not prejudice his current or future civilian employment opportunities, to the same extent as would have a similar discharge from active status. This is because he can conceal the fact of separation from inactive status more successfully than he can separation from active duty status.

Not only does the Navy make no attempt to hound former personnel after their return to civilian life, but also it is sought affirmatively to minimize any prejudice to them by reason of matter contained in their naval records, through refusal to furnish information from such records to inquiring public or press, unless authorized by the individual concerned. With particular reference to any obligation to protect the public against homosexuals, it is recognized that despite the statutes to the contrary, he is generally treated as more of a social nuisance in civilian life, i.e. law enforcement agents ensuring travel to other jurisdiction, fines, etc. In the rare case of the truly vicious sex maniac or child molester, appropriate civilian investigative agencies are of course confidentially informed of his release and possible future whereabouts.

As respects future employment with another governmental agency, or in connection with classified Defense contracts, homosexuals are prejudiced through referral of their names to the F.B.I. in the normal flow of intelligence information. This, however, results from the existence of an intelligence file concerning them, regardless of whether or how they may have been processed out of the service.

(e) <u>Homosexual behavior as a manifestation of illness other than psychosis</u>. The question as to M'Naghten's case criteria, as opposed to those of the recent Durham decision will be first discussed. In writing the Department of Defense directive, as well as Navy directives which both preceded and followed it, the criterion of existence or non-existence of "psychosis" (not insanity) was consciously adopted to prescribe a medical, rather than a legal, test.

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In a comparatively recent case involving a young physician in the service who had gone homosexually berserk aboard a troop transport, a West Coast Naval Hospital diagnosed the physician as being afflicted with schizophrenic reaction - which is very definitely a psychosis. The Chief of Naval Personnel recommended honorable separation, since under the "psychosis" test of the SECNAV Instruction, the homosexual activity of the physician was a symptomatic manifestation of his psychosis, and he was therefore not required to be held responsible for such activity. In this case, however, the Bureau of Medicine and Surgery, and the Office of the Judge Advocate General advised the Secretary that the "psychosis" meant legal insanity, and was not used in the medical sense of the term. Therefore, since the young physician could distinguish right from wrong and adhere to the right, under the rule in M'Naghten's case, he should be discharged other than honorably.

The Chief of Naval Personnel strongly prefers the "psychosis" test in its medical meaning, as it was originally written in the directive, and would like to see the M'Naghten criterion completely discarded, at least in all cases of homosexuality which are not actually disposed of by court-martial trial. The "psychosis" criterion represents an approach toward, without adoption in toto of, the Durham case ruling that a crime which is the product of mental disease should be excused. This "middle ground" approach seems to be sound for present purposes.

Regarding the question as to enlarging the criterion to excuse non-psychotic homosexuals, the Chief of Naval Personnel is thoroughly aware that many psychoneurotics are very sick people. Likewise, homosexuals who are afflicted with many organic diseases are ill and disabled. Yet the homosexuality is regarded as clearly separate and apart from physical ailments; less clearly, but still separate from psychoneurotic illness; and integrally associated with psychotic illness. The psychoneurotic illness is obviously the grey zone. The objection to pushing the line down into the field of psychoneurosis is that this would make the disposition of cases dependent upon differences of subject opinion. In other words, there is much less room for disagreement, in lay as opposed to medical, or among medical experts themselves, as to whether the individual is or is not suffering from an illness of psychotic proportions, than there would be with respect to both the existence of and degree of psychoneurotic illness.

(f) Safeguarding rights of the individual. Our investigative methods do not extend to any form of physical abuse. The requirements of Articles 31(b), UCMJ, relative to warning the individuals before interview and before requesting statements, are complied with. Beyond this, the individual is not warned in advance that he is under surveillance, and is not told at the outset of interrogation that no case can be made against him unless he talks. If changes in investigative procedures are contemplated, it should be as the result of an independent survey of the entire field of investigations - not as an offshoot of a study of homosexuals, which represent only a fraction of the overall investigative caseload.

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Some time in the past it was noted that subsequent to making signed statements, individuals have contended that they did not at the time know the meaning of the terms used. It is the present investigative practice to ensure that the individuals being interrogated are made aware of the definition of the terms, and so indicate in their statements.

(g) Final central review. The issue is raised as to whether members of departmental review boards possess sufficiently wide and diversified experience to guarantee consideration of all factors involved. Review boards are constituted of mature officers of the rank of lieutenant commander and commander and their recommendations are in turn reviewed by senior officers with wide service experience. Questionable cases are reviewed as many as four times subsequent to board action before a final decision is rendered.

So far as concerns "documented facts in the area of human behavior, many members of the staff of the Chief of Naval Personnel, directly concerned with administrative action in the homosexual case, have personally reviewed papers in the cases of hundreds of homosexuals, including, variously, voluminous statements by the homosexuals themselves; statements of all types of persons who have engaged in acts with them; medical and psychiatric evaluations by both Armed Forces and civilian medical experts, observation of law enforcement authorities, etc. Further they have read extensive literature on the subject espousing every conceivable viewpoint.

It is considered that these personnel can discuss and act in cases of homosexual activity in as calm, objective and dispassionate atmosphere as in any other type of disciplinary action.

It is held moreover that the responsibility must be with the Chief of Naval Personnel, implementing the policies set forth by the Secretary of the Navy, in view of his responsibilities for the personnel effectiveness of the Navy.

(h) The undesirable discharge for habitual homosexuals not committing assault. Some form of stigmatized discharge is considered necessary, both as a deterrent to others and to preclude service evasion as discussed in the covering memorandum. It is questioned that any alternative form of other than honorable discharge is seriously proposed, so long as the policy to discharge homosexuals with stigma remains unchanged.

(i) Inequality of punishment. Issue is taken with the proposition that the undesirable discharge is universally disastrous to those on the higher end of the social scale and meaningless to those on the lower end. The observations of the Chief of Naval Personnel have been that professional men are more often able to resume practice of their profession, with no question ever being raised as to circumstances surrounding their leaving

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the service. On the other hand, in positions in private industry where labor supply equals or outstrips demand, requiring the presentation of Armed Forces separation documents constitutes a time-saving device for both discouraging and rejecting unwanted applicants.

Be all of the foregoing as it may, however, inequality does exist as to the consequences of administrative action, as to persons in some broad classes and especially from individual to individual. But exactly the same situation prevails as to punishments in civilian life. The white collar worker may be injured by merely having been indicted to a greater extent than is the manual laborer who has served a ten year term in the penitentiary. This is simply inherent in our social order, and cannot be changed by any means short of complete abrogation of government by uniform law in favor of government by individual men only.

(j) Effect on the individual. The missions of the Military Services are such that the policies with respect to the individual must be subordinated to the policies promoting the greatest effectiveness of the respective Service. In any social order, individuals whose voluntary behavior does not conform to the standards of morality held by the majority of the group must be hurt in proportion to their degree of divergence from the behavioral norm. The Navy at least does not lock up the habitual type of homosexual offender and thereby forever brand him as a felon. As to the effect upon some of the Class III and Class II offenders, i.e., the one-time-only participants in homosexual activity, our procedures may occasionally be of disproportionate harshness. This is discussed in the covering memorandum.

(k) Impact on social structure. The individuals whom the Navy returns to civilian society as homosexuals are preponderantly either (1) those who the civilian society gave us as homosexuals, or (2) those who just happened to be in the Navy, rather than in civilian society, when their homosexual propensities came into flower. As a matter of fact in a large percentage of cases, one or the other partner in the homosexual act is in fact a member of the civilian society. It is not understood how the impact on the social structure could be different from the impact of those similarly discharged for reasons of fraud, theft and the like. Furthermore, it is contended that present procedures have less adverse effect on the Navy's public relations than would a change in policy fostering retention of homosexuals and condonation of these acts. Although, as in all other types of cases, the Chief of Naval Personnel has received correspondence questioning the action taken or to be taken in individual cases and requesting reconsideration, none have indicated any material disagreement with the general policy.

4. Concerning the facts about homosexuality which psychiatrists accept, as outlined in paragraph 6 of the enclosure to the basic memorandum, the following comment is submitted. (Paragraphing identical to that of paragraph 6 of the enclosure to reference (a)). It is agreed that:

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(a) Homosexual behavior may occur in the case of any individual up until the early twenties, without necessarily meaning that the individual will be homosexually inclined for the balance of his life. Realizing this the Chief of Naval Personnel has put special emphasis on instruction and guidance with respect to homosexual activity and the consequences thereof during indoctrination periods and periodically during service.

By a similar token, many adolescents who commit burglary and other offenses which are treated specially as juvenile offenses and usually do not entail incarceration or a permanent criminal"record" in civilian life are none the less discharged from the naval service with a bad conduct or dishonorable discharge.

(b) Homosexuality is a continuum, not an entity and that disciplinary action is likely to deter only those near the heterosexual end of the continuum, not the confirmed homosexual.

(c) An individual's judgement with respect to overt homosexuality would be colored by conscious or unconscious homosexual tendencies. However an individual's judgement is likewise affected by numerous other types of frustation, inferiority complexes, and repressions.

(d) Special experience is required to develop and maintain an objective view toward homosexuality. It is not believed, however, that medical or psychiatric training is a sine qua non to such objectivity. It is the fact that homosexual behavior does cut into the value system of almost every individual that makes it of extreme concern in the military services.

(e) Homosexuals cannot be identified by external characteristics or mannerisms.

(f) There is no correlation between homosexuality and either ability or attainments. Whether or not public opinion holds homosexuality to be synonymous with degeneracy, the fact remains that a policy which long remained contrary to public opinion could not but have an adverse effect on the Navy.

(g) The problem of homosexual management is more acute in the Navy than in other services, in that Navy life in general is more conducive to the development of latent homosexual tendencies. These circumstances are considered to require a firm policy without extreme flexibility. It must be recognized, however, that while the foregoing applies strictly to shipboard duties, the other services do have comparable situations at isolated stations; that the majority of reported homosexual activity involves civilians; and that the overall problem is aggravated in times of war when periods of absence from home and isolation from the other sex are greatly extended.

229 Digitized by Google 230 BLANK

AJAG(MJ):ct

3 December 1956

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE NAVY
(PERSONNEL AND RESERVE FORCES)

Subj: Directives on Management of Homosexuals, proposed Board for revision of; comments concerning

Ref : (a) SecNav Inst 1620.1
(b) Head, Neuropsychiatry Br, Professional Div; BuMed ltr dtd 28 Sep 1956, w/BuMed end dtd 3 Oct 1956 to ASN(P&RF)
(c) CNP Memo Pers-F-ntn, Ser F-1080 w/encl to ASN(P&RF) dtd 14 Nov 1956

Encl: (1) The Law of the M'Naghten & Durham cases

1. References (b) and (c) which were referred to the Judge Advocate General for comment are returned herewith.

2. The Judge Advocate General concurs in the position taken and the recommendations proposed by the Chief of Naval Personnel regarding the matters set forth in reference (b). Further, it is considered that enclosure (2) of reference (c) ("Comments on the Homosexual Problem") is a thorough and effective point by point disposition of the issues raised by the Head, Neuropsychiatry, Professional Division.

3. The appointment of civilian specialists to a committee for the purpose of studying the problem of homosexual behavior within the naval service would tend to enlarge, out of all proportions, the problem as it actually exists. Resulting publicity in all probability would be of such a nature as to unfairly condemn the service in the eyes of a vast majority of the public.

4. The Judge Advocate General agrees that a continuing study by a committee composed of representatives of the Bureaus concerned would be appropriate and beneficial. A representative of this office would be made available to serve on such a committee.

5. It is considered that existing directives are proving basically sound and satisfactory. The individuals concerned, as well as the service are being afforded legal and adequate protection. Any proposed changes in present policies and procedures, established by reference (a),

231

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should be implemented only where they are consonant with the primary objective of protecting the efficiency, morale and general welfare of the naval service.

6. Enclosure (1) briefly sets out the law of the M'Naghten and Durham cases and the position taken by the United States Court of Military Appeals thereon. The Judge Advocate General concurs with the controlling opinion contained in United States vs. Kunak. It is not deemed necessary in establishing criteria for administrative processing of homosexual cases that this administrative area be limited or complicated by attempted application of either the "M'Naghten" or "Durham" rules which, for the purpose of determining the innocence or guilt before our criminal courts measure the mental responsibility for crime.

Very respectfully,

CHESTER WARD

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THE M'NAGHTEN & DURHAM CASES

1. Since the middle of the Nineteenth Century, the test of criminal responsibility followed in England and in most American jurisdictions has been that announced in the M'Naghten case, 8 Eng. Re, 718(1843), as follows:

> "* * * the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

The U. S. Court of Appeals, District of Columbia Circuit, had occasion to consider this well established rule in the case of Durham v. United States, 214F.2d 862 (1954). In this case the court announced that former common law should not be followed where changes in conditions have made it obsolete. Inherent in the ruling of the court was the conclusion that in the District of Columbia, formulation of tests of criminal responsibility is entrusted to the courts, which may adopt changes in such tests retroactively. The court then proceeded to rule that whenever there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed, trial court must provide the jury with guides for determining whether the accused can be held criminally responsible. The test laid down in the Durham case required instructions to the jury relative to criminal responsibility which, in substance, advised the jury that they may find the defendant guilty only if they find, beyond reasonable doubt, from evidence and from facts fairly deducible (1) that the defendant was not suffering from diseased or defective mental condition at the time of the act or, (2) that the act was not the result of such condition. The court concluded finally that in determining whether the accused was suffering from diseased or defective mental condition, and whether his act was caused by such condition, the jury may consider symptoms, stages, manifestations, testimony of psychiatrists as to the nature of the disease or defect and that the jury's range of inquiry may include but is not limited to whether the accused knew right from wrong, whether he acted under compulsion of an irresistible impulse, or had been deprived of or lost the power of his will. This case has been widely discussed and cited as a modern approach to the problem of mental responsibility for crime.

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2. Subsequent to the Durham decision, the U. S. Court of Military Appeals considered the District of Columbia rule in the case of United States v. Kmak, 5 USCMA 346, 17 CMR 346. The rule adopted in Durham was rejected as not acceptable for use in Court-Martial cases. In retaining the "right and wrong" and the "irresistible impulse" tests, the court in Kmak referred to its particular problem of interpreting military law in accordance with the intent of Congress and in light of the exigencies confronting the armed services. The court pointed out that Chapter XIV of the Manual for Courts-Martial, 1951, covers the subject thoroughly and follows the tests long used by both civilian and military courts. It stated that if revolutionary changes are desirable in recasting the laws, the better procedure is to have Congress enact the necessary legislation. It would appear, therefore, that there is small likelihood of adoption by the military of the Durham rule in the foreseeable future.

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C O P Y

Oct 11 1949

MEMORANDUM FOR THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Discharge of Homosexuals from the Armed Services.

The Personnel Policy Board has approved the following policy with respect to treatment and discharge of homosexuals from the Armed Services:

1. a. Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces be made mandatory.

b. Each branch of the Armed Forces should include information on homosexuality in its educational program.

c. In cases involving female personnel, a female officer should be a member of all boards.

d. A central review board for each service at Departmental level would insure uniform action on cases of homosexuality throughout each Department. Conferences between members of these boards would tend to promote uniform action throughout the Armed Services. However, it is recognized that the different Departments have administrative problems more or less peculiar to each Service, and for this reason the administrative details of implementing the policy outlined below for the disposition of homosexual personnel may be at the option of the various Departments concerned.

e. Disposition boards shall be guided by policy outlined as follows:

(1) Homosexual personnel coming within the purview of this policy will fall into several categories which may or may not overlap, and will be more or less complicated by the facts and circumstances peculiar to the individual case. The cases, however, are generally classified and normal disposition presented for each class as follows:

(a) CLASS I is defined as those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud or actual intimidation, thereby constituting the invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

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(1) Disposition: Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with existing instructions.

(b) CLASS II is defined as those cases wherein personnel have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of CLASS I above.

(1) Disposition: Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the Service under such conditions in which case he will be recommended for trial by court-martial. However, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if superior authority considers the circumstances to render such action essential in the interest of the military establishment.

(2) It is emphasized that no distincting is made in the administrative handling of cases of alleged participation in homosexual acts while a member of the United States Armed Forces, based upon whether or not the role of a person in any particular action was active or passive.

(c) CLASS III is defined as those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Dispositions: Administrative separation will be accomplished, and type of discharge to be given will take into consideration all attendant facts and circumstances.

(2) All persons who confess homosexual tendencies shall not necessarily be discharged merely on the basis of confession of homosexuality. It is essential to distinguish between those who have uncontrollable perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Evidence of an existing psychological or other maladjustment resulting from such tendencies, or other circumstances, which render the individual inadaptable for military service, will be carefully evaluated by each Board concerned in making a decision.

(2) The Character of separation normally to be effected for all classes of homosexuality arising among service personnel shall be

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similar and without distinction as to sex (male or female), or status (officer or enlisted), in all components of the Armed Forces.

It is requested that this policy be placed in effect as soon as practicable. Present policies, procedures and practices should be reviewed in the light of this policy, and a report submitted to the Chairman, Personnel Policy Board, not later than 7 December 1949.

/s/ Hubert E. Howard
Hubert E. Howard
Chairman

cc: Dir., P&A Army
ChNavPers, Navy
Dir., Mil. Pers., Air
Comdt. USMC
Comdt. USCG

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APP 6

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DEPARTMENT OF THE NAVY
Office of the Secretary
Washington 25, D. C.

SECNAV 1620.1
Pers-B221-mb
5 June 1953

SECNAV INSTRUCTION 1620.1

From: Secretary of the Navy
To: All Ships and Stations

Subj: Procedure for the disposition of cases of homosexuality involving naval personnel

1. Purpose. To promulgate a uniform procedure relative to the disposition of personnel in cases involving homosexual tendencies or acts.

2. Reissuance and Cancellation. To reissue, unchanged, the instructions in SecNav letter of 10 December 1949 (NDB Jul-Dec 1949, 49-882, pp. 55-57) which are hereby canceled by this Instruction.

3. Background. Homosexuality within the naval service is primarily a military problem. However, insofar as the individual is concerned, homosexuality is a medical problem because it is a condition which must be considered at variance from the normal, mature, adult sexual development. While the psychological mechanism of homosexuality is primarily a psychiatric problem, on the other hand, the commission of unacceptable social acts falls definitely into the category of the legal and disciplinary spheres. Barring psychosis, individuals should be held socially responsible and accountable for their acts. Those who have committed homosexual offenses should be held accountable for their failure of control. Likewise, no individual should be permitted to transgress the rights of others. All socially unacceptable sexual acts should be punished in direct proportion to the seriousness of the offense itself, ever bearing in mind the need of the dual purpose of military justice, (1) as a deterrent, to maintain proper order and morals, and (2) the corrective influence on the individual himself. Each case needs careful, thorough, and individual study so that final treatment, action, or disposition will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls.

4. Action

a. Known homosexual individuals are military liabilities and must be eliminated from the service. Commanding officers receiving information indicating that a person in the naval service possesses homosexual tendencies or has engaged in an act of homosexuality

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shall inquire thoroughly and comprehensively into the matter and ascertain all the facts and circumstances of the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

b. It is essential that all the facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained. Except where the individuals are brought to trial by general court-martial, a complete report of the recorded facts shall be made to the Department, by expeditious means. In cases wherein the evidence thus far developed, considered in the light of all surrounding circumstances, is productive of reasonable doubt as to whether a homosexual tendency actually exists or a homosexual act, attempt, or proposal has in fact been committed or made, the commanding officer may hold the matter in abeyance for a limited time pending his first opportunity to seek assistance or advice from a representative of the Office of Naval Intelligence experienced in investigation of such cases, or from experienced qualified medical experts as regards characteristics which may support or negate the existance of tendencies claimed or suspected.

c. Care must be exercised that all persons involved are completely investigated and reported and that appropriate information is expeditiously forwarded to other commands as necessary to complete all cases. All information concerning any other homosexuals involved, either civilian or service personnel, will be forwarded to the Department for information and further evaluation. In order to guarantee the availability of essential witnesses in a subsequent court-martial proceeding, where such are necessary, no personnel shall be separated from the service without prior reference to the Department until the investigation and disposition of other personnel involved shall have been concluded. No person held solely as a witness shall be confined, unless confinement be deemed reasonably necessary for his own protection.

d. Each case of homosexuality reported to the Department in accordance with the provisions of this directive shall be referred to an appropriate board of officers in the Department who will give full consideration to all the facts and circumstances in the case and will make recommendations as to the disposition to be directed. In all cases involving female personnel, a female officer shall be a member of all such boards.

e. This procedure shall be followed without exception in all cases of homosexuality arising among personnel, male and female, of the Navy and Marine Corps, Naval Reserve, and Marine Corps Reserve

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while on active duty. The word Department is used in connection with the submission of reports and shall be construed to mean either the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate.

5. Classification and Procedures. Personnel coming within the purview of this directive fall into several categories which may or may not overlap and which will be more or less complicated by facts and circumstances peculiar to the individual case. These cases, however, are generally classified and the normal disposition for each class will be as follows:

a. (1) Class I is defined as those cases accompanied by assault or coercion as characterized by an act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation, thereby constituting invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

(2) Disposition. Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

b. (1) Class II is defined as those cases wherein personnel, while in the naval service, have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of class I above.

(2) Disposition. Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the service under such conditions, in which case he will be recommended for trial by court-martial. Detailed procedure follows:

(3) Sample charges and specifications for trial by general court-martial shall be drawn and the accused shall be confronted with them. He shall be offered the following alternatives:

(a) 1. Officers shall be informed that acceptance will be recommended of a resignation in tenor as follows: "I hereby tender my resignation for the good of the service and to escape trial by general court-martial. I understand that my separation from the naval service effected by acceptance of this resignation will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that

242 Digitized by Google

I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of separation therefrom may have a bearing."

2. If an accused officer refuses to submit his resignation so worded he shall be recommended for trial by general court-martial. Recommendations for trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

(b) 1. Enlisted persons shall be informed that a signed statement in tenor as follows, will probably receive favorable action: "I hereby accept an undesirable discharge for the good of the service and to escape trial by general court-martial. I understand that my separation from the naval service effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing."

2. If an accused enlisted person refuses to sign a statement so worded, he shall be recommended for trial by general court-martial. Recommendations for trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

(4) While the foregoing is the normal procedure that should be followed in these cases, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if a superior authority considers the circumstances to render such action essential in the interest of the naval service or the public. Likewise, where personnel have other substantial charges against them for which, in the opinion of the commanding officer and the convening authority, they should be brought to trial by general court-martial, such trial should be ordered and appropriate charges preferred, including charges setting forth the alleged homosexual acts or offenses.

(5) The commanding officer shall submit to the Department a complete report of each class II offender who is afforded, and who elects, the alternative of resignation or undesirable discharge. In all cases the report should include: A full and complete statement from the officer or enlisted person concerned, or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of the sample general court-martial charge and

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specification(s); resignation of the officer or agreement by the enlisted person to accept an undesirable discharge as worded in paragraph 5b(3) above; and the commanding officer's detailed comments and recommendations. The commanding officer's report will include a psychiatric or medical evaluation of the person concerned.

c. Class III is defined as those rare cases wherein personnel only exhibit, profess, or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Disposition. All such cases shall be carefully evaluated with a view toward prompt administrative separation and the type of discharge to be given by the Department will take into consideration all attendant facts and circumstances.

(2) In these cases it is extremely important that every attempt be made to distinguish between personnel having true homosexual tendencies and those who are professing such tendencies solely for the purpose of avoiding military service. The person admitting homosexual tendencies and/or preservice acts shall be advised to submit a written statement, setting forth in fullest detail his history with reference to his condition. Those admitting tendencies as well as those who do not will be instructed that they are privileged to submit such written statement as they may see fit, and, if they do not desire to submit a statement, to set forth that fact in writing. Likewise, such a person may be informed that he is privileged to submit his resignation or request for discharge under other than honorable conditions for the good of the service, and upon receipt of such resignation or discharge request, all facts will be considered and decision made as to whether the separation should be under other than honorable conditions or a higher form. Examination of the individual will be made and written evaluation submitted, by a psychiatrist or other medical officer. A statement of the individual, if one is made, and the medical evaluation, together with detailed comments and recommendations of the commanding officer, shall be promptly submitted to the Department. In reviewing the papers thus submitted in the Department, disposition shall depend upon all attendant circumstances, as revealed by the submitted papers and available departmental records, special emphasis to be laid upon the apparent motivation and candor of the individual and upon the character of his previous military service as revealed by records.

(3) Where personnel admitting, professing, or exhibiting homosexual tendencies commit or have committed offenses, whether or not related to their purported homosexuality, for which, in the

244 Digitized by Google

opinion of the commanding officer and the convening authority, they should be brought to trial by court-martial, then the Department should be requested to delay administrative disposition pending the completion of the court-martial trial.

6. Rights of the Individual. In connection with the processing of persons suspected of an offense under the Uniform Code of Military Justice, attention is invited to article 31, UCMJ, to which strict compliance is directed.

7. Conclusion. The Navy Department has occasionally encountered misconceptions on the following points: (1) The role of the medical expert in regard to cases involving homosexual acts while in the naval service, as classified in paragraph 5 above; and (2) the degree of culpability of persons who, while in the naval service, have passively participated in homosexual acts. Explanations are therefore supplied as to these matters.

a. In the case of one who, while in the naval service, has been the active participant in a homosexual act, opinion of medical experts that the participant is not a "true homosexual" is immaterial as concerns following the procedure set forth in the preceding paragraph. In the case of one who, while in the service, has allegedly made an indecent proposal or has attempted to commit a homosexual act, expert medical opinion that he is not a "true homosexual" is of bearing where the words or actions constituting the alleged proposal or attempt are admitted, but the actor contends that he spoke or acted facetiously, with no real intent to engage in a homosexual act. Such an issue will normally be best left to resolution by a general court-martial. In the case of one who, while in the naval service, has engaged in a homosexual act as a passive participant, expert opinion that such passive participant is not a "true homosexual" is material only if a contention is made that the participation was not voluntary. In other than clear cases of forcible invasion, this issue is likewise one which can normally be best resolved by a general court-martial.

b. It is emphasized that no distinction is made in administrative handling of cases of alleged participation in homosexual acts while in the naval service, based upon whether the role of a person in any particular act(s) was passive or active. It is the view of the Navy Department that one who voluntarily assumes a passive role in such acts is no less a homosexual than the active participant. Commanding officers should impress this fact upon those under their command.

JOHN F. FLOBERG
Assistant Secretary of the Navy for Air

245

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DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington 25, D. C.

BUPERS 1620.3
Pers-B22-ml
6 October 1953

RESTRICTED
SECURITY INFORMATION
BUPERS INSTRUCTION 1620.3

From: Chief of Naval Personnel
To: All Ships and Stations

Subj: Information concerning homosexuality

Ref: (a) SECNAVINST 1620.1

Encl: (1) Information concerning homosexual activity in the naval service

1. Purpose. It is the intention of this Instruction to present information of an instructional and educational nature with a view to decreasing the incidence of homosexual offenses by naval personnel through a better understanding of the nature of the offense and the results thereof.

2. Background. It appears evident that many officers and enlisted personnel are not sufficiently aware of the nature and inherent dangers of homosexual acts to avoid becoming involved therein, or to know the procedure required in the disposition of such cases. The disgrace and humiliation devolving on those persons separated as a result of homosexual acts is attested by the many letters received in this Bureau from ex-service personnel requesting an opportunity to redeem themselves through reenlistment. The responsibility of the Navy Department to attempt to prevent young persons in the naval service from falling victim to this vicious and degenerate practice is evident. In this connection, all recruits are now receiving instruction on the subject matter during recruit training. It is anticipated that instruction of a similar nature will be given to officer candidates during their school training and to officer students of the General Line School, commencing in the near future.

3. Action. It is desired that the full contents of this Instruction and pertinent parts of reference (a) be carefully explained to each officer in the naval service in order that he may be better qualified to fulfill his responsibilities regarding the welfare of all personnel under his command. It is intended that the material contained in enclosure (1) be used in an educational and instructive manner with the thought that by so doing, it may alert service personnel to the dangers inherent in homosexuality and so may prevent unsuspecting individuals from becoming involved in this degenerate practice.

J. L. HOLLOWAY, Jr.
Chief of Naval Personnel

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INFORMATION CONCERNING HOMOSEXUAL ACTIVITY IN THE NAVAL SERVICE

1. General Information. Certain general misconceptions regarding the subject of homosexuality are prevalent in the service. Some of these misconceptions are:

a. That a homosexual can be easily detected by his or her characteristics of speech, dress, etc. This is completely erroneous in the majority of the cases. Personnel should not rely on this "safeguard" in selecting friends and companions.

b. That venereal disease cannot be contracted through homosexual acts. In a New York clinic one out of every four persons treated for venereal disease admitted to recent homosexual activity.

c. That homosexuals are "born" not "made." Reliance on this false conception to avoid entrapment is dangerous. There are many factors that enter into the final determination as to whether an individual turns to homosexualism or remains a normally adjusted person. Experimenters can easily become homosexuals.

d. That the Navy will "cure" its homosexual persons. The Navy has neither the facilities nor the personnel nor is it part of the Navy's mission to attempt to treat homosexual persons.

2. Clarification of Certain Aspects

a. Definition. For the purposes of this discussion, a homosexual act consists of any act of sexual gratification with another person of the same sex. Such an act is a violation of the moral code of this country and of Federal law (Uniform Code of Military Justice). Under the Uniform Code of Military Justice, whether tried under Article 125: Sodomy, or Article 134: Indecent or Lewd Acts With Another, a homosexual act is punishable by 5 years' imprisonment and a dishonorable discharge. The law and the Navy Department do not attempt to determine or to label an offender as a confirmed homosexual. Rather, disciplinary action is taken for engaging in an act or in conduct which constitutes the commission of an offense. From this point of view, the commission of a homosexual act is considered a military rather than a medical problem. Early separation from the service of persons who commit one or more homosexual acts or admit to uncontrollable homosexual tendencies is essential for the morale, welfare, and security of the Navy as a whole. Normally such persons will be separated by BuPers under conditions other than honorable.

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b. Active Versus Passive. It appears that many service personnel feel that a passive homosexual act is not as reprehensible as one in which the individual concerned takes an active role. It should be clearly understood that in the view of the Navy Department and of Federal law, a so-called passive member in a homosexual act is in all respects as guilty of an offense as is the active partner. It takes two persons to commit a homosexual act. It should also be made evident that the willing but passive participation in a homosexual act is as equally degenerate and morally unacceptable as is the active participation. In view of the foregoing, the Navy Department makes no differentiation between active and passive partners in determining appropriate disciplinary action or the type of discharge to be awarded.

c. Relation of Intoxication to Homosexual Acts. In many homosexual cases referred to the Department, the offender contends that he was under the influence of intoxicating liquor and therefore not in full control of his reactions. It is unquestionably true that the vast majority of homosexual acts are committed after the individuals concerned have consumed varying amounts of alcoholic beverages. However, drunkenness is not an acceptable excuse for the willing participation in a homosexual act in any greater degree than it would be for the commission of other offenses.

d. The Onetime Offender. From time to time the Navy Department receives representations to the effect that the "onetime offender" should neither be punished nor separated from the naval service. Various supporting statements for these representations are supplied, running from alleged youthful curiosity, thrill-seeking, lack of knowledge of the seriousness of the offense, intoxication, etc. It has been the experience of the Navy Department that, first, it is a practical impossibility to determine in many cases whether the offender actually has committed only one offense; secondly, no one can attest positively that the individual concerned would not repeat the initial act should a similar set of circumstances arise. In addition, the onetime offender is possibly even more susceptible to blackmail, coercion, and general mental duress than is his confirmed counterpart. The risks of retaining large numbers of such persons with the resultant possible contamination of others and the lowering of naval morale and efficiency make such action highly undesirable as a general measure. Each case of this nature is considered individually on its own merits by a board of officers in BuPers and disposition is predicated upon the attendant circumstances. In any event, the commission of a single homosexual act, whether actively or passively, is as much a crime and an offense under the provisions of the Uniform Code of Military Justice, a Federal law, as is the commission of a single act of theft. It should be made quite clear that the Navy Department cannot and will not condone violations of this law.

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3. Some Characteristics of Homosexuals. It is a prime characteristic of homosexuals to zealously attempt to enlarge the group of social outcasts to which they belong. Therefore, the retention in the naval service of any single individual who may through force or other means invade the rights of others cannot be considered. A second characteristic of a homosexual person is the apparent desire, once caught, to talk freely to investigating officers, agents, or others; such a talk normally develops into a complete exposition of the individual's homosexual past including a recounting of names, dates, and places in great detail. It can be seen from this that a single act committed by any service person may, and probably will, come to official notice at a later date. A further characteristic of the homosexual group is the practice of maintaining lists of other known homosexuals throughout the country. Lists of this nature not infrequently fall into the hands of Government investigating agencies. Thus, transfers to distant points do not constitute a safeguard from eventual discovery.

4. Security. One of the primary reasons for the necessity of promptly separating persons involved in homosexual activity is the lack of security inherent in this group of individuals. Lists of names of confirmed homosexuals are not difficult for subversive agents to obtain. The obvious blackmailing opportunities open to such agents leave the homosexual without any safeguard or recourse against such tactics except to provide the information desired. It should be evident that persons subject to such external pressure particularly during times of war or national emergency are exceptionally poor military risks and are, in fact, positive liabilities.

5. Undesirable Practices. There are certain practices occasionally resorted to by service personnel which may lead them unwittingly into the homosexual group or which may result in other serious consequences. The most prominent of these is the practice of consorting with known homosexuals, either civilians or service personnel, or frequenting taverns or other places known to be the resorts of homosexuals with the possible intent of obtaining free drinks, food, or money from these perverts. Occasionally this practice extends to attempts to blackmail the homosexual into offering money to be rid of the service person. These and other similar practices can result in heavy fines and long jail sentences if convicted by civil authorities and discharge by reason of such conviction, or confinement and discharge under other than honorable conditions if tried by court-martial. In addition, such practices often lead to the more or less unintentional, inadvertent commission of a homosexual act and can easily result in the individual being classified by others as a homosexual, purely through these associations.

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6. Reporting Acts or Attempts. Many instances occur where a homosexual attempts to perform a perverted act on an unsuspecting and unwilling person. Such acts most frequently occur when the unwilling person is either asleep or otherwise unable to repel the advances at the onset. These attempts are occasionally witnessed by persons not directly involved. Persons so victimized as well as those who have witnessed such an attempt should first positively identify the intruder and then report all circumstances as soon as possible either to his division officer, duty officer, or other available superior in command. This report should be made regardless of whether the attempted act occurs aboard ship or ashore. Care should be exercised in making such reports to insure first, that a homosexual act actually was attempted and, secondly, that the individual reported was the person who attempted the act. A person should not be reported purely on unfounded suspicions, appearance, or associations. Nor should service personnel other than designated and authorized persons attempt to perform investigative work in this or any other field. Persons who resist completely an attempted homosexual act and make a prompt report of all circumstances are not subject to disciplinary action in connection with the attempted act.

7. Departmental Coordination. It frequently appears that service personnel commit homosexual acts with civilians or members of another branch of the armed services either under the misapprehension that such an act does not constitute a military offense or that there is small probability of the offense being reported to Navy officials. It is pointed out that investigations by civilian agencies and all branches of the armed services are closely coordinated in this matter. Likewise, arrests and convictions of service personnel by civil authorities are made known to the individual's commanding officer. The latter is then required to process the individual in the same manner as though he had committed the act on a naval ship or station. It must be recognized that as long as a member of the naval service is on active duty or otherwise subject to naval court-martial jurisdiction, the commission of a homosexual act is an offense punishable under the code regardless of the place where the offense is committed, the status of other participants, or other similar factors involved.

8. End Results of Commission of Homosexual Acts. In accordance with the provisions of SECNAV Instruction 1620.1, persons who are determined to have committed or to have attempted to commit a homosexual act while in the naval service must be offered the option of trial by general court-martial or separation under conditions other than honorable, unless force has been used in the commission of the act in which event trial by general court-martial is mandatory. If

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tried by court-martial and found guilty, a sentence of 5 years' imprisonment and a dishonorable discharge may be awarded. If the individual elects to be separated under conditions other than honorable, he loses substantially all rights and privileges as a veteran and finds humiliation, degradation, and difficulty in obtaining suitable employment. In either case, the effects are lasting and unavoidable. Since the commission of a homosexual act is entirely within the control of the individuals concerned, no one else can be held accountable for the drastic results which are the inevitable outcome of such offenses. It is hoped that the information contained herein will help prevent the unwitting, unsuspecting, or naive serviceman from becoming involved in this degrading and degenerate practice.

252

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ARMY REGULATIONS
No. 635–89

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *21 January 1953*

PERSONNEL SEPARATIONS

HOMOSEXUALS

SECTION I. GENERAL. Paragraph
Purpose 1
Classification 2
Policy 3
Responsibility 4
II. DISPOSITION.
Class I 5
Class II 6
Class III 7
Reason and authority for separation 8
Documentation of case 9
Availability of witness 10
Reduction upon discharge 11
Disposition of papers 12
Reports 13

SECTION I

GENERAL

1. Purpose.—These regulations prescribe criteria and procedures for the investigation of homosexual personnel and their discharge from the Army. Homosexual offenders are subject to trial by court-martial for violation of the Uniform Code of Military Justice, Article 125; however, in each individual case it must be determined whether the interests of the service will be served best by such action or by administrative separation, or by medical or other treatment. Section 249 (c), Armed Forces Reserve Act of 1952 (66 Stat. 495; 50 U. S. C. 992), provides that the administrative discharge of a member of the reserve components for cause, under conditions other than honorable, may be effected only pursuant to the approved findings of a board of officers convened by competent authority, except in those instances wherein the individual concerned consents to such discharge with waiver of board proceedings.

2. Classification.—Homosexual personnel coming within the purview of these regulations fall into several categories which may or may not overlap and will be more or less complicated by the facts and circumstances peculiar to the individual case. Individuals who can-

*These regulations supersede AR 600–443, 10 April 1953, including C 1, 15 April 1954.

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not be regarded as true and confirmed homosexuals, but who have been involved in a single act as a result of immaturity, curiosity, or intoxication, when the psychiatric evaluation concludes that they are not confirmed homosexuals and do not possess strong homosexual tendencies, should normally be retained in service. Cases, however, generally are classified as follows:

a. Class I.—Class I includes those cases which involve an invasion of the rights of another person as where the homosexual act is accompanied by assault or coercion or where the other person involved does not willingly cooperate in, or consent to, the homosexual act or, if cooperated in, or consented to, where the cooperation or consent was obtained through fraud. Class I also includes cases which involve a homosexual act with a child under the age of consent without regard to whether the child cooperated in such act. For the purpose of these regulations, a person under the age of 16 years is a child under the age of consent.

b. Class II.—Class II includes those cases wherein personnel subject to court-martial jurisdiction, including overt, confirmed homosexuals, have engaged in one or more provable homosexual acts not within the purview of class I. Included in the definition of homosexual acts are overt acts, active or passive in nature, and proposals, solicitations, or attempts to perform any homosexual act even though no overt act is committed. No distinction is to be made in the administrative handling of cases of alleged participation in homosexual acts because of the active or passive nature of the participation in such acts by the Army personnel involved.

c. Class III.—Class III includes cases of—

(1) Overt, confirmed homosexuals who have not engaged in any homosexual acts (as defined in *b* above) since entry into military service, and

(2) Individuals who possess homosexual tendencies to such a degree as to render them unsuitable for military service.

Individuals who merely profess homosexual tendencies should normally be retained in service. It is essential to distinguish between those who have uncontrollable, perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Evidence of existing psychological or other maladjustment resulting from such tendencies will be evaluated carefully in making the decision as to whether the individual is of use to the service.

3. **Policy.**—*a. Separation criteria.*—True, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory.

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b. Character of separation.

(1) The character of separation normally to be effected for all classes of homosexuals arising among personnel of the Army shall be similar for all components and without distinction as to sex (male or female) or status (officer, warrant officer, or enlisted). All facts in the case together with the individual's record of service will be considered.

(2) Individuals who admit being confirmed homosexuals or admit committing one or more overt acts of homosexuality while in service will normally be separated under other than honorable conditions if, because of the improbability of successful trial, they are separated administratively.

4. Responsibility.—It is the duty of every member of the military service to be alert to situations affecting discipline, morale, or security of the military forces. In this connection, overt homosexuality is not to be condoned. Commanding officers receiving information indicating that a person in the Army possesses homosexual tendencies or has engaged in an act of homosexuality shall inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

Section II

DISPOSITION

5. Class I.—When investigation clearly indicates that a person's case is included within class I, he normally will be tried by general court-martial unless found to be suffering from a major mental disorder. Charges will be preferred and forwarded to the commander having general court-martial jurisdiction. If successful prosecution of a case is not deemed feasible, disposition will be made as in a class II case.

6. Class II.—When the investigation clearly indicates that a person's case is included in class II, he will be referred for physical and mental examination. In the absence of a major mental disorder, charges and specification(s) for trial by general court-martial will be prepared and the accused will be confronted with them. Disposition in class II cases will normally be accomplished by administrative separation under conditions other than honorable (see par. 3*b*(2)), unless the individual resists separation from the service under such conditions, in which case he will be recommended for trial by court-martial or board action if trial is not feasible. The following actions will be taken, as appropriate:

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a. If accused is an officer.

(1) *Resignations.*—The accused will be informed that a resignation may be submitted for the good of the service in lieu of trial by court-martial. Such resignation will be tendered in accordance with paragraph 4, AR 635–120, employing Form C contained in paragraph 12, AR 635–120.

(2) *General court-martial.*—If the accused refuses to submit a suitable resignation, the commander exercising general court-martial jurisdiction over the individual normally will order him to be brought to trial by general court-martial.

(3) *Referral to Headquarters, Department of the Army.*—When the accused submits a resignation in accordance with (1) above, or when the evidence indicates that trial by court-martial may not result in conviction of the accused, the tender of resignation with supporting documents or a complete report of the case, as outlined in paragraph 9, will be forwarded to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPO.

b. If the accused is an enlisted person.

(1) *Signed statement or resignation.*

(*a*) Enlisted persons serving in specified term enlistments, enlisted persons serving in unspecified term enlistments who have not served at least 3 years therein, and reservists serving on active duty, will be afforded an opportunity to submit a signed statement in tenor as follows:

> I hereby accept an undesirable discharge for the good of the service and to escape trial by general court-martial. I understand that my separation from the Army effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of many rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing.

Enlisted persons serving in unspecified term enlistments who have served at least 3 years therein may tender a resignation under paragraph 8*a*, AR 615–367, in lieu of the foregoing statement.

(*b*) If enlisted personnel do not take action provided in (*a*) above, the commander exercising general court-martial jurisdiction over the individual will order him to be brought to trial by general court-martial or will initiate board action if trial is not feasible.

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(2) *Referral to major commander.*—When the action provided in (1) (*a*) above, is taken or when the evidence indicates that trial by court-martial may not result in conviction of the accused, the signed statement, together with supporting documents, or a complete report of the case as outlined in paragraph 9 will be referred to the commander of the appropriate continental army, the Military District of Washington, the oversea commander in a United States Territory or possession, or other major oversea commander.

(3) *Action by major commander.*—The Army commander will direct one of the following actions:

(*a*) Final action on statement accepting discharge.

(*b*) Initiation of action with a view to trial by court-martial.

(*c*) Retention in service.

(*d*) Acceptance or rejection of the resignation. When resignation is accepted, the enlisted person will be discharged under provisions of paragraph 8*a*, AR 615–367. When resignation is not accepted, the resignation with supporting documents will be forwarded to The Adjutant General, Department of the Army, ATTN: AGPO.

(*e*) Appearance before a board of officers convened for the purpose of making recommendations relative to the disposition of the accused.

(*f*) Initiation of action under AR 615–368 to effect discharge for unfitness.

7. Class III.—*a. Documentation and forwarding of case.*—When the investigation clearly indicates that a person's case is included in class III, the following actions will be taken:

(1) A detailed signed statement will be obtained from each individual concerned relative to his tendencies and any past homosexual actions. (See Uniform Code of Military Justice, Article 31.)

(2) A written report will be obtained from a medical officer, a psychiatrist, whenever possible, based upon his study and evaluation of the individual.

(3) Officer personnel will be afforded the opportunity of submitting an unqualified resignation and all papers in the case will be forwarded to The Adjutant General, Department of the Army, ATTN: AGPO, with detailed comment and recommendations of the commanding officer.

258 Digitized by Google

(4) Enlisted persons serving in specified term enlistments, enlisted persons serving in unspecified term enlistments who have not served at least 3 years therein, and enlisted reservists serving on active duty, will be afforded an opportunity to submit a signed statement accepting discharge, either general or undesirable as determined to be appropriate by the major commander. Enlisted persons serving in unspecified term enlistments who have served at least 3 years therein may tender a resignation under paragraph 8*b*, AR 615–367, in lieu of the foregoing statement. All papers in the case will be forwarded to the commander of the appropriate continental army, the Military District of Washington, the oversea commander in a United States Territory or possession, or other major oversea commander. The major commander will direct one of the actions specified in paragraph 6*b* (3), except for trial by general court-martial. When resignation is accepted, the enlisted person will be discharged under provisions of paragraph 8*b*, AR 615–367. When resignation is not accepted, the resignation with supporting documents will be forwarded to The Adjutant General, Department of the Army, ATTN: AGPO.

b. Action by major commander.

(1) When separation is warranted, the enlisted person will be administratively discharged from the service and furnished either a general or undesirable discharge certificate as determined by the major commander. In exceptional cases where an individual admitted homosexual tendencies at the time of processing for induction and was nevertheless inducted or where an individual performed outstanding or heroic military service an honorable discharge may be furnished.

(2) When separation is not warranted, such special instructions as may be required in each case will be issued by him.

8. Reason and authority for separation.—*a.* When enlisted personnel are administratively discharged from the service under these regulations, the specific reason and authority for discharge (item 8, DD Form 214) will be entered as "AR 635–205 and AR 635–89 SPN 29."

b. When resignation is accepted in lieu of separation for homosexuality, the reason and authority for discharge (item 8, DD Form 214) will be entered as "Paragraph 8*a* (or 8*b*), AR 615–367 SPN 29."

9. Documentation of case.—It is essential that all facts indicating homosexual tendencies or acts be recorded properly and that signed

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statements of all witnesses be obtained, except when individuals are brought to trial by general court-martial. In all cases, the report will include the statement of the individual's date of birth; the amount of active service of the individual concerned; the statement required in paragraph 7*a*(1) from the officer or enlisted person concerned in class III cases, or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of general court-martial charges and specifications, where indicated; resignation of the officer or request by the enlisted person for discharge, as worded in paragraph 6; waiver of board action by reservist, if applicable; and the commanding officer's detailed comments and recommendations. The report also will include a medical evaluation, including a psychiatric study whenever possible, of the person concerned. An adequate evaluation will include as a minimum—

a. Statement as to whether there are any medical contraindications to administrative disposition.

b. A psychiatric study of the person concerned, whenever possible, to include a minimum—

(1) Personal history including, if any, a detailed account of development of homosexuality.
(2) Report of mental status examination.
(3) Psychiatric diagnosis, when appropriate.
(4) Opinion regarding the mental responsibility of the individual.
(5) Opinion regarding the existence, degree, and type of homosexuality.

c. Medical recommendation regarding the disposition of the case.

10. Availability of witness.—In order to guarantee the availability of essential military witnesses in subsequent proceedings, the appropriate commander will ascertain promptly the termination or transfer status of each witness. No witness shall be transferred or separated from the service before the proceedings commence, except those whose terms of enlistment expire, or in those cases where an individual's period of active service is fixed by law, where release from active duty is to be accomplished by self-executing orders, or where a person's retirement for age or other reasons is mandatory. In exceptional cases, a timely request for instructions will be forwarded to The Adjutant General, Department of the Army.

11. Reduction upon discharge.—Upon determination that an enlisted person is to be discharged from the service as undesirable under these regulations, the authority accomplishing the discharge will, if the individual concerned is in a grade above E–1, automatically re-

260

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duce such individual to grade E–1 without further administrative procedure by discharging the enlisted person in that grade.

12. **Disposition of papers.**—In those instances when the major commanders have final authority and the discharge of the enlisted man has been effected, the complete file of the case, together with the service record and allied papers, will be forwarded to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPI.

13. **Reports.**—In those cases where the field commanders have final authority, individual reports, in duplicate, will be furnished the Assistant Chief of Staff, G–2, Department of the Army, Washington 25, D. C., for each enlisted individual retained in service. Such report will be furnished at the time the decision is made to retain the individual in service.

[AG 220.8 (6 Dec 54) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

M. B. RIDGWAY,
General, United States Army,
Chief of Staff.

OFFICIAL:
JOHN A. KLEIN,
Major General, United States Army,
The Adjutant General.

DISTRIBUTION:
Active Army: A.
To be distributed on a need-to-know basis to all units and headquarters down to and including companies and batteries and to units and headquarters of comparable size.
NG: State AG (3).
USAR: None.

TAGO 3216B

U. S. GOVERNMENT PRINTING OFFICE, 1955

261

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PERSONNEL SEPARATIONS

HOMOSEXUALS

CHANGES
No. 1

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., 27 April 1955

AR 635–89, 21 January 1955, is changed as follows:

6. Class II. When the investigation * * * taken, as appropriate:

* * * * * * *

b. If the accused is an enlisted person.

* * * * * * *

(3) *Action by major commander.*

* * * * * * *

(*e*) Appearance before a board of officers convened for the purpose of making recommendations relative to the disposition of the accused (*c* below).

* * * * * * *

c. (Added) *Appearance of enlisted personnel before a board of officers.* When an enlisted person is to appear before a board of officers convened under these regulations, the following actions will be taken:

(1) Commanders recommending elimination pursuant to action of board of officers will afford the individual the opportunity of requesting counsel. If the individual declines, a signed statement from the individual that he was afforded the opportunity of requesting counsel but declined it will be included with the supporting documents of the case.

(2) The recorder or president of the board will advise a respondent, who is not represented by counsel, of the type of discharge he may receive as a result of the pending board action and that he may request representation by counsel. The respondent will state whether or not he desires counsel.

7.1 (Added) **Action by the Department of the Army.** In those cases referred to in paragraphs 6*a*(3) or 7*a*(3), the Department of the Army will direct one of the following actions:

a. Acceptance or rejection of resignation.
b. Initiation of action with view to trial by court-martial.
c. Retention in the service.
d. Initiation of elimination action under AR 605–200.
e. Other special instructions as may be required in each case.

8. **Reason and authority for separation.**

* * * * * * *

a. (Added) When action is initiated to eliminate an individual from the service under these regulations, but the individual is brought before a board of officers under provisions of AR 615–368 and is

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discharged for unfitness pursuant thereto, the reason and authority for discharge (item 8, DD Form 214) will be entered as "AR 615–368 SPN 29."

[AG 220.8 (15 Apr 55) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

M. B. RIDGWAY,
General, United States Army,
Chief of Staff.

OFFICIAL:

JOHN A. KLEIN,
Major General, United States Army,
The Adjutant General.

DISTRIBUTION:

Active Army: A

To be distributed on a need-to-know basis to all units and headquarters down to and including companies and batteries and to units and headquarters of comparable size.

NG: State AG (6).

USAR: None

TAGO 46231B

U. S. GOVERNMENT PRINTING OFFICE: 1955

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AR 635–89
C 2

PERSONNEL SEPARATIONS

HOMOSEXUALS

CHANGES No. 2

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *1 June 1955*

AR 635–89, 21 January 1955, is changed as follows:

11. (Superseded) **Reduction upon discharge.** Upon determination that an enlisted person is to be discharged from the service with an Undesirable Discharge Certificate (DD Form 258A) under these regulations, the authority accomplishing the discharge will, if the individual concerned is in a grade above E–1, automatically reduce such individual to grade E–1 without further administrative procedure by discharging the enlisted person in that grade.

[AG 220.8 (19 May 55) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

M. B. RIDGWAY,
General, United States Army,
Chief of Staff.

OFFICIAL:

JOHN A. KLEIN,
Major General, United States Army,
The Adjutant General.

DISTRIBUTION:

Active Army: A:
To be distributed on a need-to-know basis to all units and headquarters down to and including companies and batteries and to units and headquarters of comparable size.
NG: State AG (3).
USAR: None.

TAGO 5565B—June 310488°—55

U. S. GOVERNMENT PRINTING OFFICE: 1955

264

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APP 9

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1. Summary of Facts - History

2. Policy - Paragraph 3

3. Classification of Cases and Action - Paragraphs 12 and 16a

4. Sequence of Processing

   Letter of Notification (Legal) 3
   Waiver of Board by Application for Discharge
   Board Requested
   Unclassified Statement of Reasons

5. Specific Answers to Navy Questions

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SUMMARY OF FACTS PERTAINING TO AFR 35-66, 23 Jul 56

1. In 1949 the Department of Defense established and published guidance for the several services in regard to the elimination of homosexuals. In order to observe the requirements of that directive and to provide initial uniformity of action within the Air Force, a separate regulation (AFR 35-66) was published and final approval authority was retained within the Department of the Air Force.

2. Just over a year ago, authority to discharge airmen who waived board action was delegated as a means of expediting their elimination from the United States Air Force. This delegation is now being expanded to provide senior commanders authority to finalize all airman cases under this regulation. In addition, the administrative processing of officer cases is being streamlined.

3. Experience within the Department has identified two major problem areas: Initial identification and Administrative processing.

a. Initial identification: This process will be facilitated by investigative reports available to your command. Cases which do not merit further action can be rather easily identified and should be promptly dismissed. In those rare instances wherein only a single accusation or allegation has been determined through investigation, care must be taken to fully evaluate all facets presented, bearing in mind the susceptibility of such cases to malicious charges. In certain instances it may develop that discharge procedure under the provisions of AFM 35-4 (physical disability) is indicated for reasons not related to the issue of homosexuality, e.g. tuberculosis. In such instances the administrative requirements

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of both procedures must be met. It is essential that each administrative procedure carry a cross-reference to the other and that, where possible, they be carried on simultaneously and consolidated as soon as possible. Cases involving immaturity and professed intoxication require careful study and evaluation. Evidence of one or two teen-age acts may imply only youthful curiosity or can be a positive identification of homosexual tendencies. When only youthful curiosity is involved, with no indication of an established pattern of homosexuality, closing the case without further action is proper unless the individual's ability to perform service has been compromised to the extent that separation for the convenience of the Government is indicated. Intoxication has grown to be one of the most common excuses presented by personnel confronted with evidence of homosexual acts or tendencies. To accept such explanations cannot alter the fact that such actions have undoubtedly compromised the member's ability to continue to perform military service. More than one such incident not only confirms the above but permits positive classification under AFR 35-66.

b. Administrative processing: Experience has shown that board procedures are fully dependent on the competency of the board members. Upon their knowledge, background and ability to exercise mature judgment rests the quality of each case. It is very seldom that the findings and recommendations of fact-finding boards have been found to be unduly severe; however, it has been commonly noted that a true disparity often exists between board findings which establish the proper classification and the recommendations as to character of discharge. The revised regulation establishes clear guidelines for board determinations and at the same time provides sufficient leeway for both the board and the approving authority

268 Digitized by Google

to assess, within limits, the proper character of discharge when discharge is in order. This is particularly true in those instances wherein discharge under a regulation other than AFR 35-66 is believed appropriate. Exercise of this option, i.e., discharge under other regulations, must be reserved for those cases wherein the issue of homosexuality is secondary to other behavior characteristics warranting a more severe discharge under other regulations. To obscure true homosexual cases under another regulation which might provide the individual with a more desirable discharge is contrary to the best interests of the Air Force and reflects adversely on its integrity in fulfilling its responsibilities to other government agencies and society in general.

4. In finalizing cases under this regulation, it will be noted that a more severe character of discharge than that recommended by a board or that acceptable to airmen waiving board action cannot be directed by commanders exercising final authority. Ample provision is made, however, for the return of cases for reconsideration or rehearing where the board findings are not consistent with the true facts of the case.

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AIR FORCE REGULATION
NO. 35–66

DEPARTMENT OF THE AIR FORCE
WASHINGTON, 25 JULY 1956

MILITARY PERSONNEL

Discharge for Homosexual Acts or Tendencies

SECTION A—GENERAL

	Paragraph
To Whom This Regulation Applies	1
Pertinent Definitions	2
What the Air Force Policy Is Regarding Homosexuality	3
Character of Discharge Furnished Members Discharged Under This Regulation	4
Airmen Who Hold Appointments as Commissioned or Warrant Officers, Reserve of the Air Force	5
Who Will Report Acts of Homosexuality	6
Separation or Reassignment of Members on Whom Action Is Pending	7
Separation or Reassignment of Military Witnesses	8
Classified Reports, Medical and Professional Reports	9
Term To Be Entered on DD Form 214	10

SECTION B—CLASSIFICATION, PROCESSING, AND DISPOSITION

Initiation of Action	11
Classification of Homosexuality Cases	12
How Cases Will Be Processed	13
How Cases Will Be Documented and Forwarded	14
What Action the Officer Exercising General Court-Martial Jurisdiction Will Take	15
Who Will Take Final Action	16

SECTION C—BOARD OF OFFICERS

Functions and Duties	17
Appointment	18
Composition	19
Procedures for Boards	20
Approval of Proceedings of Board	21

***PURPOSE:** This regulation establishes policies and procedures for processing members of the Air Force who engage in homosexual acts and members who possess established and confirmed homosexual tendencies or who habitually associate with individuals known to them to be homosexuals. It also constitutes authority for disposition of such members.*

SECTION A—GENERAL

1. To Whom This Regulation Applies. This regulation applies to all members of the Air Force. Members of the Reserve components of the Air Force not serving on extended active duty who fall within the policy stated in this regulation will be processed under the specific regulation pertaining to their respective components.

2. Pertinent Definitions. The following definitions will apply in this regulation:

a. *Officer*—Unless otherwise indicated, a commissioned or warrant officer.

b. *Reserve Components*—The Air Force Reserve and the Air National Guard of the United States.

c. *Reserve of the Air Force*—The common Federal status possessed by members of the Air Force Reserve and the Air National Guard of the United States.

d. *Extended Active Duty*—Any tour of active duty, other than active duty for training, performed in the Federal service by a member of a Reserve component. Extended active duty may be further defined as the only tour in which strength accountability changes from the Reserve to the active establishment.

e. *Active Military Service*—A general term applied to all active duty with the active military establishment.

f. *Discharge*—Termination by administrative action of all appointments or enlistments, or both, in the United States Air Force.

g. *Minor*—A person under the age of 16.

h. *Member of the Military Service*—A person who holds a valid appointment or is enlisted in any component of the Armed Forces of the United States.

i. *Member of the Air Force*—A person who holds a valid appointment or is enlisted in any component of the Air Force. The term "mem-

*This regulation supersedes AFR 35–66, 31 May 1954, including Change 35–66A, 6 December 1954.

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ber of the Air Force" and "member" as used in this regulation are synonymous.

j. *Respondent*—A member who has received official notification that action has been initiated against him under this regulation.

3. What the Air Force Policy Is Regarding Homosexuality. Members of the Air Force serving in the active military service represent the military establishment 24 hours a day. There is no distinction between duty time and off-duty time as the high moral standards of the service must be maintained at all times. All members of the Reserve components not serving on extended active duty are expected to maintain the same high standards as active duty personnel throughout the entire period of their military service. Homosexuality will not be tolerated in the Air Force. Prompt discharge of members who are confirmed homosexuals, or who habitually commit homosexual acts, or members with established or confirmed homosexual tendencies is mandatory. Exceptions to permit retention in the service are proper only when the offense was committed, proposed, or attempted under the most unusual extenuating circumstances, when it is determined that the member does not have homosexual tendencies, and when the member's ability to perform military service has not been compromised. Intoxication of itself is not considered an extenuating circumstance; this is particularly true when more than one act, proposal, or attempt is involved.

4. Character of Discharge Furnished Members Discharged Under This Regulation. To the extent authorized by law, the character of discharge for all classes of homosexuality as defined in paragraph 12 arising among service personnel will be similar and without distinction as to sex or status. Participation in a homosexual act, or proposing or attempting to do so, is very serious misconduct. A member who is discharged as a class II will not be granted a discharge higher in character than under other than honorable conditions, except in unusual circumstances, even though his military service has been commendable in all other respects. In adjudging the character of discharge in class III cases, consideration will be given to the character of military service rendered.

a. *Class I*—Since trial by general court-martial is usually appropriate for cases in this class, the character of discharge will be that prescribed by the court-martial sentence, as approved.

b. *Class II*—Normally, discharge under other than honorable conditions is appropriate. Exceptions to permit honorable discharge or discharge under honorable conditions (General Discharge Certificate) are proper only under unusual extenuating circumstances.

c. *Class III*—Normally, discharge under honorable conditions (General Discharge Certificate) is appropriate. All attendant facts and circumstances, including character of military service rendered, will be taken into consideration.

5. Airmen Who Hold Appointments as Commissioned or Warrant Officers, Reserve of the Air Force. An airman who holds an appointment as a commissioned or warrant officer, Reserve of the Air Force, and who applies for discharge from his enlistment, in lieu of further action under this regulation, must concurrently tender his resignation from all appointments held by him in the United States Air Force as prescribed in attachment 1 or 2. In those cases where a member does not apply for discharge, a board of officers, convened under this regulation to consider his case, will also consider whether the airman should be discharged from all appointments held in the Air Force.

6. Who Will Report Acts of Homosexuality. It is the duty of every member to report to his commander any facts concerning overt acts of homosexuality by any member which may come to his attention for any homosexual acts or tendencies. Any member who makes a false official statement for the purpose of initiating action to obtain a discharge under this regulation is subject to action under the appropriate Articles of the Uniform Code of Military Justice (UCMJ).

7. Separation or Reassignment of Members on Whom Action Is Pending:

a. *Separation.* Members against whom action is being considered, recommended, or initiated under this regulation will not be separated under other regulations until the case under this regulation is closed without first obtaining the concurrence of the commander authorized to take final action under this regulation or the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C., as appropriate. When separation by reason of expiration of term of service or completion of period of active duty is imminent, instructions will be requested by electrical means from the Director of Military Personnel, Headquarters USAF. The request will include name, grade, service number, normal date of separation, status of OSI investigation or action under this regulation, tentative classification (class I, II, or III), and estimated date action can be completed. If the member concerned claims that such retention will create a severe personal hardship, the request will include this information, together with recommended action.

271

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b. *Reassignment.* Members against whom action is being considered, recommended, or initiated under this regulation will not be reassigned from the jurisdiction of the major air command until the case is closed, except when reassignment to a hospital in accordance with AFM 35–11 is appropriate. When reassignment in accordance with AFM 35–11 is necessary, all information pertaining to action under this regulation will be furnished the hospital commander. The Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C., will be informed that such action has been taken. If Headquarters USAF should, without specific reference to pending action under this regulation, direct reassignment before a case is closed, the command concerned will immediately notify the Director of Military Personnel, Headquarters USAF, and will take no further action to reassign the member until further instructions are received.

8. Separation or Reassignment of Military Witnesses. To guarantee the availability of essential military witnesses in the event of board action, the appropriate commander will promptly determine the separation or reassignment status of each such witness. Such a witness will not be reassigned from the jurisdiction of the major air command until the case under this regulation is closed. Such a witness will not be separated under other regulations until the case under this regulation is closed without first obtaining the concurrence of the commander authorized to take final action under this regulation or the Director of Military Personnel, Headquarters USAF, as appropriate. If the witness is a member whose separation by reason of expiration of term of service or completion of a period of active duty is imminent, action as prescribed in paragraph 7a will be taken. A member held solely as a witness will not be confined.

9. Classified Reports, Medical and Professional Reports:

a. *Classified Reports.* AFRs 124–1 and 205–6 prohibit making classified reports available to respondents or informing them of the existence thereof. Where OSI reports are material to any particular case, a summary will be prepared. Before release of this summary to a board, to respondent, or his counsel, coordination will be obtained from the local district OSI. When final disposition of a case has been made, the OSI reports will be returned to the organization from which received.

b. *Medical and Professional Reports.* Reports of medical examinations or professional reports which might prove detrimental to his physical health will not be shown to nor will copies thereof be furnished respondent (see AFR 160–35). They may be made available to counsel for the respondent provided that he agrees to limit the information to his professional use and not to disclose it to the respondent.

10. Term To Be Entered on DD Form 214. The term to be entered in item 11 of DD Form 214, "Armed Forces of the United States Report of Transfer or Discharge," as reason and authority for discharge under this regulation will be "AFR 35–66 and (cite message or indorsement of headquarters directing discharge)," and the appropriate separation designation number (SDN) as listed below. When separation is accomplished under other regulations, except under AFR 39–16 or AFR 39–17, the entry in item 11 of DD Form 214 will include a reference to this regulation in addition to a reference to the regulation under which separation is effected. When discharge is directed under AFR 39–16 or AFR 39–17, item 11 of DD Form 214 will *not* contain a reference to this regulation. The following is a list of the SDNs applicable to discharge under this regulation:

Code	*Reason*
250	Class I homosexual, convicted by general court-martial
251	Class II homosexual, convicted by general court-martial
253	Discharge as a result of board action (class II homosexual)
254	Discharge as a result of board action (class III homosexual)
256	Approval of application for discharge (class III homosexual)
257	Approval of application for discharge (class II homosexual)

SECTION B—CLASSIFICATION, PROCESSING, AND DISPOSITION

11. Initiation of Action. A commander receiving information indicating that a member may fall within the purview of this regulation will report the facts and circumstances in each case to the local Office of Special Investigations (OSI) and request an investigation by that office.

a. When an extensive period of time may elapse between the time an initial OSI report is received and the time an investigation is closed and the initial or interim report contains sufficient information to warrant processing a member under this regulation, commanders may initiate action and, except as indicated in b be-

low, process a case to completion without waiting for the OSI to conclude the investigation where the member requests discharge or tenders a resignation and where the investigative report pertaining to the member is complete.

b. When final action results in a determination that the member should be discharged, discharge will not be executed until the OSI case is closed or until the OSI district commander indicates that there is no further requirement for the member's retention.

12. Classification of Homosexuality Cases. Cases of homosexuality are generally classified as follows:

a. *Class I*—Those cases where a member, while serving in the active military service, has willfully engaged in one or more homosexual acts accompanied by assault or coercion, as characterized by an act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation or where the homosexual act was committed with a minor, regardless of whether the minor cooperated.

b. *Class II*—Those cases where a member, while serving in the active military service, has willfully engaged in one or more homosexual acts, or has proposed or attempted to perform an act of homosexuality which do not fall into the class I category. *It is emphasized that no distinction is made in the administrative handling of cases of alleged participation in homosexual acts based upon whether the role of the person in any particular act was active or passive.*

c. *Class III*—Those cases where a member, while serving in the active military service, exhibits, professes, or admits homosexual tendencies, or habitually associates with individuals known to him to be homosexuals but where there are no proven specific homosexual acts or offenses. Evidence that a member has engaged in, proposed, or attempted to perform a homosexual act *while not a member of the military service* will be considered in determining whether he has homosexual tendencies or habitually associates with persons known to him to be homosexuals. If it is determined that the member does not have homosexual tendencies, has not habitually associated with persons known to him to be homosexuals, and that his ability to perfom military service has not been compromised, consideration may be given to discharge under other appropriate regulations.

13. How Cases Will Be Processed:

a. *Class I.* When investigation indicates that a member should be classified as class I, he will be considered for trial by general court-martial, if subject to general court-martial jurisdiction. Charges will be preferred and forwarded to the officer exercising general court-martial jurisdiction over the member. In cases where member is not subject to general court-martial jurisdiction or where he is subject to general court-martial jurisdiction but the officer exercising general court-martial jurisdiction determines that trial by general court-martial would not appear to be in the best interest of the Air Force, the case will be considered as class II and processed in accordance with the procedures outlined in b below.

b. *Class II.* When investigation indicates that a member should be classified as class II, he will be confronted with the nature of the evidence against him which will be concurrently confirmed by a letter of notification (see paragraph 9 and attachment 3 of this regulation). Any case where there is doubt as to whether to classify a member as class II or class III will be processed under this paragraph. Disposition will be made as follows:

(1) *Officers* will be informed that they may tender a resignation for the good of the service in accordance with paragraph 7a(3), AFR 36–12, 22 March 1954. If a resignation is tendered, it will be prepared and forwarded in accordance with AFR 36–12 to the officer exercising general court-martial jurisdiction. The correspondence will have attached thereto all the documents required by paragraph 14a(9) through (13). The officer exercising general court-martial jurisdiction will give consideration to trial by general court-martial. He will forward the documented resignation direct to the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C. His forwarding indorsement will contain a statement that consideration has been given to trial by general court-martial and that action to initiate court-martial proceedings (is) (is not) being taken and the reasons therefor. He will send an information copy of his forwarding indorsement to the major air commander concerned. If the officer does not tender his resignation, a complete report will be forwarded in accordance with paragraph 14 to the officer exercising general court-martial juris-

273

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diction who will give consideration to trial by general court-martial. In the event he deems trial inadvisable, he will forward the documented case direct to the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C., for decision as to whether action should be continued with a view toward terminating the officer's appointments. He will send an information copy of his forwarding correspondence to the major air commander concerned.

(2) *Airmen* will be informed that they may submit an Application for discharge in lieu of further action under this regulation. If an application is submitted, it will be in the format prescribed in attachment 1 to this regulation, documented, and forwarded as prescribed in paragraph 14. If the airman does not apply for discharge, a documented report will be prepared and forwarded in accordance with paragraph 14. The commander exercising general court-martial jurisdiction will take action as prescribed in paragraph 15.

c. *Class III*—A member will not be considered as being class III and will not be permitted to tender his resignation or apply for discharge in lieu of action under this paragraph when there is convincing evidence of a homosexual act, proposal, or attempt to perform a homosexual act while a member of the military service. A member will not be considered as class III based solely on his uncorroborated written statement admitting homosexual acts or tendencies. Action prescribed by paragraph 11 will be initiated. When it is determined that a member should be classified as class III, he will be confronted with the nature of the evidence against him. This will be concurrently confirmed by a letter of notification (see paragraph 9 and attachment 3 of this regulation). Disposition will be made as follows:

(1) *Officers* will be informed that they may tender a resignation under paragraph 6a(3), AFR 36–12, in lieu of further action under this regulation. If a resignation is tendered, it will be prepared and forwarded in accordance with AFR 36–12 to the officer exercising general court-martial jurisdiction. The correspondence will

274

through (13). He will forward the documented resignation direct to the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C. He will send an information copy of his forwarding indorsement to the major air commander concerned. If an officer does not tender his resignation, a complete report will be forwarded in accordance with paragraph 14 to the officer exercising general court-martial jurisdiction, who will forward the case direct to the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C., for decision as to whether action will be continued with a view toward terminating the officer's appointment. He will send an information copy of his forwarding correspondence to the major air commander concerned.

(2) *Airmen* will be informed that they may submit an application for discharge in lieu of further action under this regulation. If an application is submitted, it will be prepared as prescribed in attachment 2, will be documented and forwarded as prescribed in paragraph 14. If the airman does not apply for discharge, a documented report will be prepared and forwarded in accordance with paragraph 14. The commander exercising general court-martial jurisdiction will take action as prescribed in paragraph 15.

d. *Special Instructions:*

(1) *Evidence of Psychiatric Disease.* When the standard medical examination indicates that there is evidence of a psychiatric disease, further processing under this regulation will be held in abeyance pending the member's appearance before a medical board in accordance with AFM 35–4. If the medical board recommends that the member appear before a physical evaluation board in accordance with AFM 35–4, action under this regulation will be discontinued. If the medical board recommends that the member be returned to duty, action under this regulation will be resumed.

Than Psychiatric Reasons. When the member is found to be not physically qualified for separation due to other than psychiatric reasons, the case will be processed and forwarded to the Director of Military Personnel, Headquarters USAF, ATTENTION: Promotions and Separations Division, Washington 25, D. C., with a statement in the forwarding indorsement indicating the status of the other separation action pending (i.e., member has met medical board on (date) for processing under AFM 35–4). Final determination on the type of separation action to be taken in this particular type of dual action case will be directed by Headquarters USAF.

14. How Cases Will Be Documented and Forwarded. Except in those cases where an officer tenders his resignation in lieu of further action under this regulation, cases which fall within the purview of this regulation will be documented and forwarded as follows:

a. The basic letter will be prepared and forwarded within 10 days following receipt of a completed report of investigation, or an initial or interim report of investigation when paragraph 11 applies. Any delay will be fully explained. The letter will also contain the following information and will have the inclosures indicated:

(1) Name, grade, service number, and organization of assignment of the person reported.
(2) Date of the person's current entry on active duty or current enlistment.
(3) Normal date of separation (completion of current tour of duty or expiration of enlistment).
(4) Prior service.
(5) Information, for an airman, on whether or not he holds an appointment as a Reserve of the Air Force and, if he does, the commissioned (or warrant officer) grade and service number.
(6) Date of birth.
(7) Origin of investigation (why investigation was initiated and by whom).
(8) A positive statement to the effect that the respondent availed himself of legal counsel (to include counsel's name and date or dates of interview) or that he declined to avail himself of this opportunity.
(9) A copy of the letter of notification prescribed in paragraph 13b and c. (A notation will be made on the copy to indicate the date and time of delivery of original letter to respondent.)
(10) A copy of the OSI investigative report, to include statements of witnesses. *(Before referring a case to a board of officers under section C of this regulation, paragraph 9 will be complied with.)*
(11) Standard medical examination, recorded on Standard Form 88, "Report of Medical Examination," to include psychiatric consultation, if feasible.
(12) Application for discharge of the airman, if application is submitted, or the officer's or airman's statement that he does not desire to submit a resignation or an application for discharge.
(13) Copy of general court-martial charges and specifications, when appropriate.

b. The documented case will be forwarded through channels to the commander exercising general court-martial jurisdiction. The basic letter and each forwarding indorsement will contain detailed comments and recommendations and will be personally signed by the commander or the officer second in command. Each headquarters below that of an officer exercising general court-martial jurisdiction through which a documented case is forwarded must complete action within 2 normal working days. Any delay will be fully explained.

15. What Action the Officer Exercising General Court-Martial Jurisdiction Will Take. The officer exercising general court-martial jurisdiction will:

a. Return the case for further investigation or documentation when in his opinion the documented case is incomplete.

b. Consider each class I and class II case for trial by general court-martial.

c. Process officer cases as prescribed in paragraph 13b(1) and c(1).

d. Process airmen cases as follows:

(1) When the airman has applied for discharge and trial by general court-martial is not deemed appropriate:
(a) Refer the case to a board of officers as prescribed in section C of this regulation, if he deems such action

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appropriate, and prepare for forwarding to the respondent a statement of reasons for the proposed discharge action. Attached to the statement of reasons will be the unclassified statements and depositions, if any, and summary (see paragraph 9a) and any other evidence which substantiates the statement of reasons, or

(b) Take action prescribed in (3) or (4) below as appropriate.

(2) When the airman has not applied for discharge and trial by general court-martial is not deemed appropriate:

(a) Close the case by directing retention in the service where the evidence completely fails to support the allegation, or

(b) Refer the case to a board of officers as prescribed in section C of this regulation, and prepare for forwarding to the respondent a statement of reasons for the proposed discharge action. Attached to the statement of reasons will be the unclassified statements and depositions, if any, and summary (see paragraph 9a) and any other evidence which substantiates the statement of reasons.

(3) Take final action as prescribed in paragraph 16 in all cases where authority to take final action has been delegated to him by the major air commander concerned.

(4) Where authority to take final action has not been delegated, forward the case to the major air commander concerned or to any other commander designated by the major air commander to take final action.

16. Who Will Take Final Action. Major air commanders are authorized to take final action on airmen cases as outlined in this paragraph. Major air commanders may redelegate all or any part of this authority to a subordinate commander but not lower than to an officer exercising general court-martial jurisdiction. The commander authorized to take final action on airmen cases may return a case for further investigation or documentation when in his opinion the documented case is incomplete. The commander authorized to take final action will insure that the application for discharge is submitted properly or that the findings and recommendations of the board are consistent with the facts of the case and the policy outlined in this regulation and will take one of the following actions:

a. When an airman has applied for discharge in lieu of further action under this regulation as class II:

(1) Approve the application and:

(a) Direct that the airman be discharged under other than honorable conditions under this regulation and furnished an Undesirable Discharge Certificate (DD Form 258AF), or

(b) Direct that the airman be honorably discharged or discharged under honorable conditions under this regulation and furnished an Honorable Discharge Certificate (DD Form 256AF) or a General Discharge Certificate (DD Form 257AF), as appropriate (this action may be taken *only* when unusual extenuating circumstances exist), or

(2) Refer the case to a board of officers as prescribed in section C of this regulation (see paragraph 15d(2)(b)).

b. When the airman has applied for discharge in lieu of further action under this regulation as class III:

(1) Approve the application and:

(a) Direct that the airman be discharged under honorable conditions under this regulation and furnished a General Discharge Certificate, or

(b) Direct that the airman be honorably discharged under this regulation and furnished an Honorable Discharge Certificate (this action may be taken *only* when unusual extenuating circumstances exist), or

(2) Refer the case to a board of officers as prescribed in section C of this regulation (see paragraph 15d(2)(b)).

c. When an airman has met a board of officers as prescribed in section C of this regulation, take action as indicated in paragraph 21b.

d. When an airman who holds an appointment as a commissioned or warrant officer, Reserve of the Air Force, has been discharged under this regulation, forward the documented case, together with any application for discharge or board proceedings, to the Director of Military Personnel, Headquarters USAF, ATTENTION:

Promotions and Separations Division, Washington 25, D. C. Commanders will *not* discharge such members from their appointments as Reserve commissioned or warrant officers.

SECTION C—BOARD OF OFFICERS

17. Functions and Duties. The functions and duties of a board of officers convened under this regulation are purely administrative. Primarily, it is a fact-finding and recommending board. It is not limited to the consideration of the file initially presented. The primary duty of the board is to develop and review all information concerning the matter under consideration, to arrive at clear, logical findings of fact and conclusions, and to recommend, on the basis of these findings and conclusions, what action should be taken in the case.

18. Appointment. Major air commander and commanders designated by him down to and including officers exercising general court-martial jurisdiction will appoint a board under this regulation when required. The order of appointment will recite the fact that the board is appointed by authority of the Secretary of the Air Force.

19. Composition. Board members will be commissioned officers of mature judgment who should be fully cognizant of the various aspects of cases of this nature and of the Air Force policy contained in this regulation. Composition of the board will consist of the following officers who must be present at all open sessions of the board:

a. Three voting members, preferably of field grade, but in no instance below the grade of captain. The senior member present must be a field grade officer. The senior member will act as president of the board.

b. If the respondent holds an appointment as a commissioned or warrant officer, Reserve of the Air Force, a majority of the voting members will be officers of the Reserve components. Each voting member will be senior in both permanent grade and temporary rank to the commissioned or warrant grade of the respondent. One voting member will be a Reserve officer serving in the grade of colonel or higher who will act as president of the board. If the respondent is an enlisted member of a Reserve component, the majority of the voting members will be officers of the Reserve components.

c. A nonvoting judge advocate officer to act as legal adviser to the board. The legal adviser may interrogate witnesses and otherwise assist the board in order that the record will be as complete as possible and to insure that all pertinent information favorable as well as unfavorable to the respondent is brought to the attention of the board and made a matter of record. The legal adviser is in no way to be considered a prosecutor and will not conduct himself as such.

d. A voting medical service officer may be appointed to the board where the facts of the case indicate interjection of medical advice or medical questions are involved, or when the respondent is a member of the medical service. In this instance, the medical member will constitute one of the three voting members required by a above.

e. If the respondent is a female, a voting female officer will be appointed to the board. In this instance, the female officer will constitute one of the three voting members required by a above.

f. A nonvoting recorder. The recorder will execute the orders of the board and will supervise the preparation and maintenance of the verbatim record of the board proceedings. He will not be present when the board is in closed session.

20. Procedures for Boards:

a. *General.* Generally, the procedures outlined in AFR 11–1 and the policies set forth in this regulation will be followed. The appointing authority or his duly appointed designee will thoroughly instruct board members on their responsibility to carry out the policy announced in this regulation and may furnish specific guidance to a board if such action is deemed appropriate. Strict rules of evidence need not be followed, but reasonable bounds of relevancy, competency, and materiality will be maintained. When the board meets in closed session, only the voting members will be present. Advice of legal adviser may be sought whenever necessary but the board will be open and advice will be obtained in open session in the presence of the recorder, respondent, and the counsel. Such proceedings will be a part of the record.

b. *Preliminary Review.* Upon receipt of a case for consideration, members of the board will review the entire file presented in order that they may be thoroughly familiar with all aspects of the case, particularly those areas which may require exploration and explanation at the hearing. Every effort will be made by members of the board to avoid forming any opinion on the eventual determination of the case until the hearing is concluded and the record complete. Each member of the board must satisfy himself that he can render a fair and impartial hearing and recommendation in any case.

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c. *Rights of Respondent.* A respondent whose case is presented to a board of officers convened under this regulation will have the following rights:

(1) *Personal Appearance or Representation.* The respondent may appear in person, with or without counsel, or be represented by counsel in his absence at all open proceedings of the board. He will not be reimbursed for expenses incident to the appearance or assistance of civilian counsel, to include military personnel not serving on extended active duty. He may have military counsel of his choice provided that such counsel is serving in the active military service and is determined to be reasonably available by the appropriate commander.

(2) *Challenge Voting Members.* The respondent may challenge *for cause only* any voting member of the board.

(3) *Witnesses.* The respondent may request the appearance before a board of any witness whose testimony he believes to be pertinent to his case specifying in his request the nature of the information the witness can provide. The board should honor such request if it finds that the witness is reasonably available and his testimony can add materially to the case. The respondent will not be reimbursed for expenses incident to the appearance or assistance of civilian witnesses, to include military personnel not serving on extended active duty. He or his counsel may question any witness appearing before a board considering his case.

(4) *Submit to Examination.* The respondent may or may not submit to examination by the board. Article 31, UCMJ, will be read and explained to him and he will be advised that all the rights granted thereby are extended to him. If he then desires to submit to examination or make a statement under oath, he will be sworn. If he does not desire to make a sworn statement, he may make an unsworn statement in mitigation or extenuation of the reasons for discharge. This statement may be oral or in writing or both. It may be made by the respondent or his counsel or both. In the event that the respondent elects to make an unsworn statement, he will not thereby subject himself to examination by the board.

(5) *Submission of Evidence.* The respondent may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, certificate, affidavit, or stipulation for consideration by the board.

(6) *Request for Discharge.* The respondent may, at any time before the time that the findings and recommendations of the board are approved, apply for discharge in lieu of further action under this regulation. Application will be submitted in accordance with appropriate attachment to this regulation. However, the board once convened will continue until his application for discharge is approved, or until the resultant findings and recommendations of the board have been approved by competent authority, whichever occurs first.

(7) *Copy of Board Report.* The respondent, upon request will be furnished a copy of the report of board proceedings, less such documents previously presented to him. If not desired, the respondent will so indicate, in writing. Reports of medical examination or professional evaluation which might prove injurious to the respondent's mental or physical condition will not be furnished. Classified documents will not be made part of the board proceedings (see paragraph 9).

d. *Recommendation of Board.* Voting will be by secret ballot. Before adjourning, the board will announce the findings and recommendation to the respondent, and to his counsel, if any. Recommendation of the board will be as follows:

(1) When the board finds that the respondent is class II, it will recommend that:

(a) The respondent be discharged under other than honorable conditions under this regulation and furnished an Undesirable Discharge Certificate, or

(b) The respondent be (honorably discharged) (discharged under honorable conditions) under this regulation and furnished (an Honorable Discharge Certificate) (General

278

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Discharge Certificate), as appropriate, because of (state unusual extenuating circumstances), or

(c) The respondent be retained in the service because of (state most unusual extenuating circumstances). (This recommendation may be made *only* when the board also finds that the respondent does not have established or confirmed homosexual tendencies and therefore is not class III and that his ability to perform military service has not been compromised.)

(2) When the board finds that the respondent is class III, it will recommend that:

(a) The respondent be discharged under honorable conditions under this regulation and furnished a General Discharge Certificate, or

(b) The respondent be honorably discharged under this regulation and furnished an Honorable Discharge Certificate because of (state unusual extenuating circumstances), or

(c) The respondent be retained in the service because of (state most unusual extenuating circumstances). (In cases where the respondent would normally be classified as class II except for the fact that the offenses occurred while not a member of the military service, this recommendation may be made *only* when the board also finds that the respondent does not have established or confirmed homosexual tendencies and that his ability to perform military service has not been compromised.)

(3) When the board finds that the respondent is *not* class II or class III, it will recommend that:

(a) The respondent be discharged under other than honorable conditions under AFR 39–17 for unfitness and furnished an Undesirable Discharge Certificate (this recommendation may be made *only* when the board also finds that the respondent is unfit for further military service), or

(b) The respondent be discharged under honorable conditions under AFR 39–16 for unsuitability and furnished a General Discharge Certificate (this recommendation may be made *only* when the board also finds that the respondent is unsuitable for further military service), or

(c) The respondent be retained in the service.

(4) If the respondent holds an appointment as a commissioned or warrant officer, Reserve of the Air Force, and discharge is recommended under (1), (2), or (3) above, the board will recommend that the respondent be (honorably discharged) (discharged under honorable conditions) (discharged under conditions other than honorable) from all appointments he holds in the United States Air Force. The character of discharge recommended must be consistent with the character of discharge recommended in (1), (2), or (3) above.

e. *Report of Board.* The report of the board will be addressed to the appointing authority and will contain a verbatim record of the hearing and the findings and recommendation of the board. It will be signed by all voting members and the recorder. The board will forward the original and three copies of its report direct to the convening authority for review.

21. Approval of Proceedings of Board:

a. *Convening and Appointing Authority.* The convening authority will review the report of the board for legal sufficiency and will insure that the findings and recommendation of the board are consistent with the available information and with the policy contained in this regulation. If the report does not contain errors which would require that it be returned for correction or rehearing the convening authority will forward the original and two copies to the appointing authority, if other than the approving authority, otherwise to the approving authority. The appointing authority will also review the report of the board as indicated above and if the report does not contain errors which would require that it be returned for correction or rehearing, he will forward the original and two copies to the approving authority.

b. *Approving Authority.* The approving authority as prescribed in paragraph 16 will review the report of the board for legal sufficiency and will insure that the findings and recommendation of the board are consistent with the available information and with the policy contained in this regulation. He may return the case for reconsideration or rehearing by the same hearing board, or for rehearing by a new board, if all

the pertinent facts or the evidence relating thereto have not been fully presented to the board; if the findings of the board do not appear to be consistent with the evidence; if the recommendation of the board does not appear to be consistent with the findings of the board or with the policy announced in this regulation; or if the record of the board proceedings is otherwise inadequate. When the report of the board does not contain errors which would require that it be returned for correction or rehearing, the approving authority will approve or disapprove the findings and recommendation of the board, take such implementing action as may be required consistent with the instructions contained in this regulation, notify the respondent, furnishing a copy of the board proceedings where requested, and close the case.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

N. F. TWINING
Chief of Staff, United States Air Force

OFFICIAL:

E. E. TORO
Colonel, USAF
Air Adjutant General

3 Attachments:
1. Application for Discharge (Class II)
2. Application for Discharge (Class III)
3. Letter of Notification

DISTRIBUTION:
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APPLICATION FOR DISCHARGE (CLASS II)

SUBJECT: Application for Discharge (AFR 35–66)

TO: (Officer Exercising General Court-Martial Jurisdiction)

1. I have been informed by my commander that he proposes to initiate action against me under AFR 35–66 (class II).

2. I have read AFR 35–66 and understand that under that regulation I am entitled to an impartial hearing by a board of officers and that at that hearing I am entitled to counsel and to present evidence and call witnesses in my behalf. I hereby waive my entitlement to appear before the board and I *request* discharge without the benefit of board proceedings. I understand that, if this application is approved, I may be discharged under other than honorable conditions.

3. I also hereby tender my resignation for the good of the service from all appointments held by me in the United States Air Force. I understand that, if this resignation is accepted, I may be discharged under other than honorable conditions. (This paragraph will be included in *all* cases where the airman holds an appointment as a commissioned or warrant officer, Reserve of the Air Force.)

4. I *understand* that, if I am discharged under other than honorable conditions, I may be deprived of many rights as a veteran both under Federal and State legislation and that I may expect to encounter substantial prejudice in civilian life in situations where the character of service rendered in the Armed Forces or the type of discharge received may have a bearing.

5. Legal counsel has been made available to me. (I did not avail myself of legal counsel) (I did avail myself of legal counsel (name of counsel) on (date or dates)).

6. I voluntarily sign this application of my own free will. A copy of this application has been retained by me.

(Signature)
JOHN A. JONES
Master Sergeant, USAF
AF 6 789 543
(CWO, W–3, ResAF, AW 12 345 678)

281

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APPLICATION FOR DISCHARGE (CLASS III)

SUBJECT: Application for Discharge (AFR 35–66)

TO: (Officer Exercising General Court-Martial Jurisdiction)

1. I have been informed by my commander that he proposes to initiate action against me under AFR 35–66 (class III).

2. I have read AFR 35–66 and understand that under that regulation I am entitled to an impartial hearing by a board of officers and that at that hearing I am entitled to counsel and to present evidence and call witnesses in my behalf. I hereby waive my entitlement to appear before the board and I *request* discharge without the benefit of board proceedings. I understand that if this application is approved I may be discharged under honorable conditions and receive a General Discharge Certificate.

3. I also hereby tender my resignation from all appointments held by me in the United States Air Force. I understand that if this resignation is accepted I may be discharged under honorable conditions and receive a General Discharge Certificate. (This paragraph will be included in *all* cases where the airman holds an appointment as a commissioned or warrant officer, Reserve of the Air Force.)

4. Legal counsel has been made available to me. (I did not avail myself of legal counsel) (I did avail myself of legal counsel (name of counsel) on (date or dates)).

5. I voluntarily sign this application of my own free will. A copy of this application has been retained by me.

(Signature)
JOHN A. JONES
Master Sergeant, USAF
AF 6 789 543
(Major, ResAF, AO 12 345 678)

282

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LETTER OF NOTIFICATION

SUBJECT: Letter of Notification

TO: (Member concerned)

1. This is to officially notify you that I am in receipt of information to substantiate discharge action which I am initiating against you under AFR 35-66.

2. Based upon this information and the policy outlined in AFR 35-66, there is reason to believe that you are a class — homosexual. For your information, a copy of this regulation is attached; it explains the policy on this subject in detail and defines your rights as a respondent in the proposed action.

3. The following actions will now be initiated (quote only applicable sentence or facts of the sentence and number in sequence):

a. As a class II (or III) respondent, your case will be referred to the appropriate authority for consideration of trial by general court-martial.

b. As a class II respondent, you may request discharge under other than honorable conditions in lieu of further action under AFR 35-66, utilizing the attached format (attach a copy of attachment 1 of AFR 35-66) which is self-explanatory.

c. As a class III respondent, you may request discharge under honorable conditions (General Discharge Certificate) in lieu of further action under AFR 35-66, using the attached format (attach a copy of attachment 2 to AFR 35-66) which is self-explanatory.

d. As a class II or III respondent, you may request that your case be considered by a board of officers as prescribed in section C of AFR 35-66. The functions of this board and your rights, including the availability of legal counsel, where desired, are fully explained in AFR 35-66. You are also advised that this board of officers may recommend that you be discharged under AFR 39-16 for unsuitability, or AFR 39-17 for unfitness in lieu of discharge under AFR 35-66. Copies of AFR 39-16 and 39-17 are available for your reference.

2 Incls:
1. AFR 35-66
2. Attachment 1 (or 2) to AFR 35-66

NOTE: The original of this letter of notification presented to the respondent will not be classified. Copies of this letter will not be made a part of his unit or field personnel records.

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INSTRUCTIONS

Do not use this form if discharged by reason of sentence of GENERAL COURT MARTIAL - use NME Form 149.

Attach original discharge certificate.

All evidence not already included in your military or naval record must be submitted by you before the date set for hearing. Since all evidence submitted will be retained on file with your application, it is suggested that extra copies be prepared for your information if you so desire. The Review Boards do not secure evidence for you.

Review Boards of the Army, Navy, Marine Corps, Coast Guard and Air Force convene in Washington, D. C. You may appear before the Board in person, however, this is not mandatory. (Such appearance will be at no expense to the government). If you state on your application that you will appear before the Board in person and fail to do so without previous satisfactory arrangement with the Board, such failure will be considered as a waiver of appearance and your case will be reviewed on the evidence contained in your military or naval record.

If you desire, you may be represented by counsel *(representation will be at no expense to the government)*. Various veterans' organizations in Washington, D. C., will furnish, upon request, competent counsel at no charge to you. If you desire representation by one of the veterans' organizations, it will be necessary for you to indicate your choice under Item 11. Those available for this purpose are:

American Red Cross
American Legion
American Veterans of WW II
Catholic War Veterans, Inc.
Disabled American Veterans
Jewish Welfare Board
National Association for the Advancement of Colored People
Veterans of Foreign Wars
Marine Corps League
Coast Guard League
Army Mutual Aid Association
Navy Mutual Aid Association

UPON COMPLETION MAIL THIS APPLICATION AS FOLLOWS:

ARMY	NAVY & MARINE CORPS	COAST GUARD	AIR FORCE
Former Officers: The Adjutant General's Office Washington 25, D. C. Former Enlisted Men: Records Administration Center St. Louis 20, Missouri	Board of Review, Discharges and Dismissals, Navy Department Washington 25, D. C.	Commandant, (CBD) U. S. Coast Guard Headquarters, Washington 25, D. C.	Former Officers: Director of Military Personnel Hq USAF Washington 25, D. C. Former Enlisted Men: Records Administration Center St. Louis 20, Missouri

If you make a change in residence, notify the appropriate headquarters immediately.

REMARKS

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APPLICATION FOR REVIEW OF DISCHARGE OR SEPARATION FROM THE ARMED FORCES OF THE UNITED STATES

BUDGET BUREAU NO. 22-R014
Approval Expires
Dec. 31, 1952

(See instructions on reverse before completing application. Please type or print)

BRANCH OF SERVICE

☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ COAST GUARD ☐ AIR FORCE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. SERVICE NUMBER

3. RATE OR GRADE AT SEPARATION	4. ORGANIZATION AT TIME OF SEPARATION

5. NATURE OF SEPARATION OR TYPE OF DISCHARGE RECEIVED DISCHARGE CERTIFICATE ATTACHED ☐ YES ☐ NO	6. DATE AND PLACE OF SEPARATION

7. I REQUEST THE FOLLOWING CORRECTIVE ACTION BE TAKEN:

8. EVIDENCE SUBMITTED IN SUPPORT OF APPLICATION IS LISTED BELOW AND FORWARDED. *(Affidavits of witnesses may be used if desired, or they may appear in person. Affidavits must be notarized. You may also submit a brief containing arguments in support of application. If space is insufficient, use additional sheet).*

9. I DESIRE TO APPEAR BEFORE THE BOARD IN PERSON *(No expense to the Government).* ☐ YES ☐ NO	10. I DESIRE TO BE REPRESENTED BY COUNSEL *(No expense to the Government).* ☐ YES ☐ NO

11. NAME AND ADDRESS OF COUNSEL *(If any)*

I MAKE THE FOREGOING STATEMENTS AS A PART OF MY APPLICATION WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT. *(U. S. Code, Title 18, Section 1001, formerly Section 80, provides a penalty as follows: a maximum fine of $10,000 or maximum imprisonment of 5 years, or both.)*

STREET OR RFD	CITY AND STATE
DATE	SIGNATURE OF APPLICANT

NOTE: If veteran is deceased or incompetent and the application is therefore signed by a person other than whose name appears in Item 1 above, indicate status in box below. If veteran is deceased, application will be signed by his spouse, next of kin or legal guardian. Legal proof of death or incompetency must accompany application.

☐ NEXT OF KIN ☐ LEGAL REPRESENTATIVE ☐ SURVIVING SPOUSE

Signature by mark (X) must be witnessed by two persons to whom the applicant is personally well known.

SIGNATURE AND ADDRESS OF PERSON WITNESSING MARK	SIGNATURE AND ADDRESS OF PERSON WITNESSING MARK

DD FORM OCT 48 293 REPLACES NAVEXOS FORM 1287, REV 9/45, WD AGO FORM 54, [illegible] AF FORM 111, W AGO 48, AND C.G. FORM 10034, REV JULY 1946, WHICH MAY BE USED UNTIL EXHAUSTED.

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S.P.P.B.

OFFICE OF THE SECRETARY OF DEFENSE
PERSONNEL POLICY BOARD
WASHINGTON 25, D. C.

Oct 12 1949

MEMORANDUM FOR THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Discharge of Homosexuals from the Armed Services.

The Personnel Policy Board has approved the following policy with respect to treatment and discharge of homosexuals from the Armed Services:

1. a. Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces be made mandatory.

b. Each branch of the Armed Forces should include information on homosexuality in its educational program.

c. In cases involving female personnel, a female officer should be a member of all boards.

d. A central review board for each service at Departmental level would insure uniform action in cases of homosexuality throughout each Department. Conferences between members of these boards would tend to promote uniform action throughout the Armed Services. However, it is recognized that the different Departments have administrative details of implementing the policy outlined below for the disposition of homosexual personnel may be at the option of the various Departments concerned.

e. Disposition boards shall be guided by policy outlined as follows:

(1) Homosexual personnel coming within the purview of this policy will fall into several categories which may or may not overlap, and will be more or less complicated by the facts and circumstances peculiar to the individual case. The cases, however, are generally classified and normal disposition prescribed for each class as follows:

(a) CLASS I is defined as those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud or actual intimidation, thereby constituting the invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

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(1) Disposition: Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with existing [illegible]

(b) CLASS II is defined as those cases wherein personnel have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of CLASS I above.

(1) Dispositions: Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the Service under such conditions in which case he will be recommended for trial by court-martial. However, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if superior authority considers the circumstances to render such action essential in the interest of the military establishment.

(2) It is emphasized that no distinction is made in the administrative handling of cases of alleged participation in homosexual acts while a member of the United States Armed Forces, based upon whether or not the role of a person in any particular action was active or passive.

(a) CLASS III is defined as those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Dispositions: Administrative separation will be accomplished, and type of discharge to be given will take into consideration all attendant facts and circumstances.

(2) All persons who confess homosexual tendencies shall not necessarily be discharged merely on the basis of confession of homosexuality. It is essential to distinguish between those who have uncontrollable perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Evidence of an existing psychological or other maladjustment resulting from such tendencies, or other circumstances, which render the individual inadaptable for military service, will be carefully evaluated by each Board concerned in making a decision.

(3) The character of separation normally to be effected for all classes of homosexuality arising among service personnel shall be similar and without distinction as to sex (male or female), or status (officer or enlisted), in all components of the Armed Forces.

It is requested that this policy be placed in effect as soon as practicable. Present policies, procedures and practices should be reviewed in the light of this policy, and a report submitted to the Chairman, Personnel Policy Board, not later than 7 December 1948.

/s/ Robert K. Howard
ROBERT K. HOWARD
Chairman

287

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DEPARTMENT OF THE AIR FORCE
STAFF MESSAGE DIVISION

OUTGOING UNCLASSIFIED MESSAGE

ROUTINE

HQ USAF AFPMP-4EC
COL NORMAN D. JARNEY 56152

MULTIPLE ADDRESS

TO : COMALAIRCOM ELMENDORF AFB AL
COMCAIRC ALBROOK AFB CZ
CINCUSAFE WSBN GER
COMFEAF TOKYO JAPAN
COMNEACOM PEPPERRELL AFB NFLD
COMAMC WRIGHT PATTERSON AFB OHIO (MAIL)
COMATC SCOTT AFB ILL (MAIL)
COMAPGC EGLIN AFB FLA (MAIL)
COMAIRU MAXWELL AFB ALA (MAIL)
CINCSAC OFFUTT AFB OMAHA NEBR (MAIL)
COMUSAFSECSVC SAN ANTONIO TEX (MAIL)
COMARIDEFCOM ENT AFB COLO (MAIL)
COMCONAC MITCHEL AFB NY (MAIL)
COMHQCOMUSAF BOLLING AFB WASH DC (MAIL)
COMMATS ANDREWS AFB CAMP SPRINGS MD (MAIL)
COMARDC BALTO MD (MAIL)
COMTAC LANGLEY AFB VA (MAIL)
COMCAP BOLLING AFB WASH DC (MAIL)
COM AF FIN DIV AF FIN CENTER DENVER COLO (MAIL)
COMAFSWC KIRTLAND AFB ALBUQUERQUE NMEX (MAIL)
COMUSAF ACADEMY LOWRY AFB COLO (MAIL)
COMDR 2225TH PERPGRU CAMP KILMER NJ (MAIL)
COMDR 2349TH PERPGRU PARKS AFB CALIF (MAIL)
COMAPOE BROOKLEY AFB ALA (MAIL)
COMAPOE WESTOVER AFB MASS (MAIL)
COMAPOE MCCHORD AFB WASH (MAIL)
COMAPOE TRAVIS AFB CALIF (MAIL)
JUSMG SPAIN

NR : AFPMP-4 42409 191348Z Apr 55

Re AFPMP-4 38740 dtd 31 Jan 1955 pertaining to interim cha
of policy concerning AFR 35-66.

Part II of referenced message is being erroneously interpr
Authority is delegated to discharge UP AFR 39-21 only when airma
waives board hearing as indicated in par 6a, AFR 35-66, and it h

AF OUT: 42409 Page 1 of 2 pages

AFHQ FORM 19 JAN 51 0-309e

288

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DEPARTMENT OF THE AIR FORCE
STAFF MESSAGE DIVISION

OUTGOING UNCLASSIFIED MESSAGE

NR: AFPMP-4 42409 (cont'd)

been determined that homosexual tendencies were deliberately concealed at time of enlistment or induction.

Request all comdrs exercising GCM jurisdiction be advised of contents of this msg ASAP.

ORIGINATOR : PMP

DISTRIBUTION: OSAF, AAC, AFN, ASC, CAG, CAV, CAG-60, CIG, CIS, CJA, CSG, CSI, CSS, CSS-H, CRP, CVC, ODC, OHO, MDC, PDC, PDP, PIR, SAFLL, MAIL

AF OUT : 42409 Page 2 of 2 pages F/pm

AFHQ FORM 0-309e
19 JAN 51
PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

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DEPARTMENT OF THE AIR FORCE
STAFF MESSAGE DIVISION

OUTGOING UNCLASSIFIED MESSAGE

ROUTINE

FM USAF AFPTP-4BC
COLONEL NORMAN D. JANNEY 76250

MULTIPLE ADDRESS

TO : COMALAIRCOM ELMENDORF AFB AL
COMCAIRC ALSROOK AFB CZ
CINCUSAFE WIESBADEN GERMANY
COMFEAF TOKYO JAPAN
COMNEACOM PEPPERRELL AFB NFLD
COMAMC WRIGHT-PATTERSON AFB OHIO (MAIL)
COMATC SCOTT AFB ILL (MAIL)
COMAFGC EGLIN AFB FLA (MAIL)
COMAIRU MAXWELL AFB ALA (MAIL)
COMSAC OFFUTT AFB OMAHA NEBR (MAIL)
COMUSAFSECSVC SAN ANTONIO TEX (MAIL)
COMAIRDEFCOM ENT AFB COLO (MAIL)
COMCONAC MITCHEL AFB NY (MAIL)
COMHQCOMUSAF BOLLING AFB WASH DC (MAIL)
COMMATS ANDREWS AFB CAMP SPRINGS MD (MAIL)
COMARDC BALTO MD (MAIL)
COMTAC LANGLEY AFB VA (MAIL)
COMCAP BOLLING AFB WASH DC (MAIL)
COM AF FIN DIV AF FIN CENTER DENVER COLO (MAIL)
COMAFSWC KIRTLAND AFB ALBUQUERQUE N MEX (MAIL)
COMUSAF ACADEMY LOWRY AFB COLO (MAIL)
COMDR 2225TH PERPGRU CAMP KILMER NJ (MAIL)
COMDR 2349TH PERPGRU PARKS AFB CALIF (MAIL)
COMDR 1703D ATS BROOKLEY AFB ALA (MAIL)
COMAPOE WESTOVER AFB MASS (MAIL)
COMAPOE MCCHORD AFB WASH (MAIL)
COMAPOE TRAVIS AFB CALIF (MAIL)

NR : AFPMP-4 38740 31 Jan 55 (DTG 3115372)

Pending publication of appropriate change to AFR 35-66, the following interim policy will be effective immediately:

I. Authority is delegated to commanders exercising General Court-Martial jurisdiction to take final action on applications for discharge submitted under paragraph 6a, AFR

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AFHQ FORM C-822

NR: AFPMP-4 38740 (cont'd)

35-66, as amended, and furnish DD Form 258AF, Undesirable Discharge Certificate, except in the following cases, which will be forwarded in accordance with paragraph 7c, AFR 35-66, as amended:

A. When airman holds an appointment as a commissioned officer or Warrant Officer of the Reserve of the Air Force.

B. When retention is considered appropriate.

C. When an undesirable discharge is not considered appropriate.

II. Authority is also delegated to discharge under AFR 39-21, if applicable, subject to the restrictions in paragraph 6c(5), AFR 35-66, as amended. All separation papers will reflect that AFR 35-66 also applies.

III. This authority may not be further delegated. The commander, or his second in command, will personally review all pertinent records before discharge.

IV. Disposition instructions to appropriate commander will include authority for separation and specify that DD Form 258AF, Undesirable Discharge Certificate, will be furnished. Information addressees will be intermediate commanders, commander, major command concerned, Director of Military Personnel, ATTENTION: Promotions and Separations Division, Hq USAF, and in the case of oversea commands, the appropriate zone of interior port commander. Zone of interior commanders effecting actual discharge will advise Director of Military Personnel, Hq USAF date of separation on the first normal work day after separation.

V. The completely documented case will be forwarded by the commander exercising General Court-Martial jurisdiction direct to the Director of Military Personnel, ATTENTION: Promotions and Separations Division, Hq USAF, within 10 days after receipt of case. Forwarding indorsement will include statement why trial was not appropriate or was inadvisable, and will be signed by the commander or second in command. Information copy will be forwarded to the major commander concerned unless otherwise directed.

VI. This delegation of authority will not be construed to prohibit the forwarding of any case to this Headquarters for

AFHQ FORM 0-309e
19 JAN 51
PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

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DEPARTMENT OF THE AIR FORCE
STAFF MESSAGE DIVISION

OUTGOING UNCLASSIFIED MESSAGE

NR: AFPMP-4 38740 (cont'd)

final determination.

ORIGINATOR : PMP

DISTRIBUTION: OSAF, AAC, AFN, ASC, CAG, CAV, CAG-60, CIG, CIS, CJA, CSG, CSI, CSS, CSS-H, CRF, CVC, ODC, OMO, NDC, PDC, PDP, PTR, SAFLL

AF OUT : 38740 Page 3 of 3 pages F/jl

AFHQ FORM 0-309e
19 JAN 51
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CHANGE

AFR 35-66A
3, 6-7

AIR FORCE REGULATION
NO. 35-66A

DEPARTMENT OF THE AIR FORCE
WASHINGTON, 6 DECEMBER 1954

MILITARY PERSONNEL

Discharge of Homosexuals

AFR 35-66, 31 May 1954, is changed as follows:

* * * *

3. Responsibility:

* * * * *

b. *Investigation.* Commanders receiving information indicating that a person in the Air Force possesses homosexual tendencies, or has engaged in an act of homosexuality, will report the facts and circumstances in each case to the local Office of Special Investigations, and request an investigation by that office. Commanders and boards of officers will safeguard disclosure of information pertaining to Office of Special Investigation reports and investigations in accordance with paragraph 7, AFR 124-1, 12 July 1951.

c. *Special Cases.* If the investigation indicates that an enlisted person was a homosexual prior to enlistment, the appropriate commander will thoroughly review all of the airman's personnel records (except medical records) immediately available to him to determine if the respondent denied a history or traits of homosexuality at time of enlistment.

* * * *

6. **Disposition of Airmen, Classes II and III.** When the investigation indicates that an airman falls within the provisions which classify him as a class II or class III homosexual, he will be confronted with the nature of the evidence against him and disposition made as follows:

* * * *

c. *Action by Secretary of Air Force Personnel Council.* Final determination will be made after consideration of all evidence submitted. The Director, Secretary of the Air Force Personnel Council, will announce the decision of the Secretary of the Air Force by directing one of the following actions:

* * * *

(5) Discharge under AFR 39-21 with an undesirable discharge when documentary evidence conclusively indicates that the airman concealed a history of homosexuality prior to entry in the service. Medical records are not to be considered as documentary evidence.

7. **Reports.** Reports of cases which fall into the classes defined in paragraph 2b will be prepared and forwarded in accordance with this paragraph:

a. *Preparation of Correspondence.* The basic letter will be prepared and forwarded within 10 days subsequent to receipt of completed report of investigation. Any delay will be fully explained. The letter will also contain the following information and will have the listed inclosures:

* * * *

b. *Forwarding Documented Case.* The documented case will be forwarded through channels to the commander exercising general court-martial jurisdiction. The basic letter and each forwarding indorsement will contain detailed comments and recommendations, including, for enlisted personnel, the type of discharge certificate which should be furnished with reasons therefor, and whether or not AFR 39-21 should be the final authority for discharge with remark that this Regulation also applies. The basic letter and each forwarding indorsement will be signed personally by the commander or officer second in command. Each headquarters through which a documented case is forwarded must complete their action within 2 normal working days. Any delay will be fully explained in the forwarding indorsement.

c. *Action by Commander Exercising General Court-Martial Jurisdiction.* The commander exercising general court-martial jurisdiction will determine whether trial by court-martial is appropriate. If trial is not appropriate, or if, although appropriate, the court-martial authority considers it inadvisable, he will, after referral to the board of officers if required, forward the completed case to the Director of Military Personnel, ATTENTION: Promotions and Separations Division, Headquarters USAF, Washington 25, D. C., for referral to the Secretary of the Air Force Personnel Council. His forwarding indorsement will be prepared in accord with b above and, in addition, will contain a statement of reasons why in his opinion trial is not appropriate or not advisable. Proceedings of the board of officers, if held, will be an added inclosure. An information copy of the case will be forwarded through channels to the commander

293 Digitized by Google

of the major air command concerned unless otherwise directed by that commander. Action by the commander exercising general court-martial jurisdiction must be completed within 10 days if court-martial or board action is not appropriate. If board action is appropriate, total processing, to include board action and dispatch to Headquarters USAF for final action, must be completed within 30 days. Any delays will be fully explained in the forwarding indorsement. Commanders are reminded that boards appointed to consider cases which arise under this Regulation are primarily fact-finding boards and legal review of their proceedings is not mandatory.

* * * *

10. Evaluation:

* * * *

c. *Consideration of Female Personnel by Secretary of the Air Force Personnel Council.* When the person concerned is a female officer or an enlisted woman, the membership of the Secretary of the Air Force Personnel Council will include a female officer.

* * * *

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

N. F. TWINING
Chief of Staff, United States Air Force

OFFICIAL:

E. E. TORO
Colonel, USAF
Air Adjutant General

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294
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AIR FORCE REGULATION
NO. 35–66

DEPARTMENT OF THE AIR FORCE
WASHINGTON, 31 MAY 1954

MILITARY PERSONNEL

Discharge of Homosexuals

	Paragraph
Purpose and Scope	1
Policy	2
Responsibility	3
Disposition of Class I Cases	4
Disposition of Officers, Classes II and III	5
Disposition of Airmen, Classes II and III	6
Reports	7
Action by Director of Military Personnel, Headquarters USAF	8
Report of Separation	9
Evaluation	10

1. Purpose and Scope. This Regulation prescribes the procedures for the investigation and disposition of homosexuals in the Air Force. This Regulation applies to all Air Force activities.

2. Policy. The policy of the Air Force with respect to homosexuals is outlined as follows:

a. *General.* Homosexuality will not be permitted in the Air Force and prompt separation of true, confirmed, or habitual homosexuals is mandatory.

b. *Classification.* Homosexuals coming within the purview of this policy fall into several categories. However, the cases generally are classified as follows:

(1) *Class I*—Those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation, thereby constituting the invasion of the rights of another, or the commission of a homosexual act with a minor under the age of consent whether the minor cooperated or not.

(2) *Class II*—Those cases wherein personnel have willfully engaged in one or more homosexual acts, or where evidence supports proposal or attempt to perform an act of homosexuality, which do not fall into the class I category. (The fact is emphasized that distinction is not made in the administrative handling of cases of alleged participation in homosexual acts based upon whether or not the role of the person in any particular act was active or passive.)

(3) *Class III*—Those cases wherein personnel exhibit, profess, or admit homosexual tendencies, or habitually and knowingly associate themselves with true, confirmed homosexuals, and wherein there are no specific homosexual acts or offenses.

c. *Type of Separation.* As discharge under this Regulation is predicated solely on the facts concerning a person's homosexual acts or tendencies, the manner of his performance of duty does not affect the type of discharge which will be effected. Disposition will normally be as follows:

(1) *Class I.* Trial by general court-martial is usually appropriate. In no case will persons in class I be discharged administratively until the entire case has been submitted to the Secretary of the Air Force who will determine whether such action is in the best interests of the service.

(2) *Class II.* Discharge will normally be under conditions other than honorable.

(3) *Class III.* Character of discharge will be administratively determined and will take into consideration all attendant facts and circumstances.

3. Responsibility:

a. *General.* Every member of the military service will consider it his duty to report to his commander any facts concerning overt acts of homosexuality by any other person which may come to his attention.

b. *Investigation.* Commanders receiving information indicating that a person in the Air Force possesses homosexual tendencies, or has

*This Regulation supersedes AFR 35–66, 12 January 1951, including Change 35–66A, 18 February 1953.

295

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engaged in an act of homosexuality, will report the facts and circumstances in each case to the local Office of Special Investigations (OSI), and request an investigation by that office.

4. **Disposition of Class I Cases.** When the investigation indicates that the accused falls within the provisions which classify a person as class I, trial by general court-martial is usually appropriate. After appropriate investigation and consideration of the charges and investigative files, if the commander exercising general court-martial jurisdiction deems the case to be one for consideration of the Secretary of the Air Force under paragraph 2c(1), he will forward the entire file and the charges as outlined in paragraph 7c, together with his recommendation and the reasons therefor.

5. **Disposition of Officers, Classes II and III.** When the investigation indicates that an officer falls within the provisions which classify him as a class II or class III homosexual, he will be confronted with the nature of the evidence against him and disposition made as follows:

a. *Class II Offenders:*

(1) *Resignation.* The officer will be informed that he may tender his resignation for the good of the service in lieu of further action under this Regulation. Such resignation will be tendered in accordance with paragraph 7, AFR 36–12, 22 March 1954. The first indorsement and inclosures will be in accord with AFR 36–12 but will also include the additional data and inclosures required by paragraph 7a.

(2) *Trial by General Court-Martial.* If the officer refuses to submit a resignation as outlined in (1) above, consideration will be given to trial by general court-martial. If the commander concerned is not the general court-martial authority, he will forward the case to the officer exercising general court-martial jurisdiction with his recommendations in the premises.

(3) *Refusal To Tender Resignation.* When the officer refuses to tender a resignation as indicated in (1) above and when trial by general court-martial is deemed inadvisable, a complete report of the case will be forwarded as outlined in paragraph 7b. The general court-martial authority, if he concurs in the inadvisability of trial by general court-martial, will convene a board of officers at the respondent's home or duty station. Upon completion of the board proceedings, the documented case will be forwarded in accordance with paragraph 7c.

(a) *Composition of Board.* The board of officers will consist of not less than three officers all senior to the respondent for the purpose of determining the facts of the case and making recommendations for consideration by the Secretary of the Air Force Personnel Council on whether the officer should be cited for elimination action under AFR 36–2 (for procedures of boards of officers, see AFR 11–1). One member of the board will be a legal officer or officer possessing legal experience, if available. If unavailable, a statement to that effect will appear in proceedings to explain the absence of a legal member. Care will be exercised in the selection of officers designated to serve on boards convened under this paragraph to insure that:

1. The board is composed of experienced officers of mature, unbiased judgment who are fully cognizant of the various aspects of cases of this nature.
2. If the respondent is a commissioned or warrant officer, Reserve of the Air Force, the membership of the board will include a majority of officers of Reserve components (see section 254(a), P.L. 476, 82d Cong., Armed Forces Reserve Act of 1952, contained in AFBul 16, 1952).
3. For a female officer, the board will include a female commissioned member.
4. The board is provided with a competent reporter or stenographer.

(b) *Authorized Recommendations of Board.* The board of officers is authorized to make the following recommendations:

1. That consideration be given towards citing the respondent for revocation action under AFR 36–2, or
2. That the respondent *not* be cited for revocation action under AFR 36–2.

(4) *Action by Secretary of Air Force Personnel Council.* The Director, Secretary of the Air Force Personnel

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Council, will announce the decision of the Secretary of the Air Force directing one of the following actions:

(a) Acceptance of the resignation as tendered.

(b) Initiation of action with a view to trial by general court-martial.

(c) Initiation of elimination action under AFR 36–2.

(d) Disposition as a class III case in accordance with the instructions contained in b below.

(e) Authorize retention in the Air Force.

b. *Class III Offenders:*

(1) *Resignation.* The officer will be informed that he may tender his resignation in lieu of further action under this Regulation. Such resignation will be tendered in accordance with paragraph 6, AFR 36–12. The first indorsement and inclosures will be in accordance with AFR 36–12 but will also include the additional data and inclosures required by paragraph 7a.

(2) *Referral to Headquarters USAF.* If the officer refuses to tender his resignation as indicated in (1) above, a complete report of the case will be forwarded as outlined in paragraph 7.

(3) *Action by Secretary of Air Force Personnel Council.* The Director, Secretary of the Air Force Personnel Council, will announce the decision of the Secretary of the Air Force directing one of the following actions:

(a) Acceptance of officer's resignation.

(b) Initiation of action to separate officer under AFR 36–2.

6. Disposition of Airmen, Classes II and III. When the investigation indicates that an airman falls within the provisions which classify him as a class II or class III homosexual, he will be confronted with the nature of the evidence against him and disposition made as follows:

a. *Submission of Application for Discharge:*

(1) Enlisted personnel will be informed that an application for discharge as follows may be submitted:

SUBJECT: Application for Discharge (AFR 35–66)

TO: Director of Military Personnel
Headquarters USAF
Washington 25, D. C.

1. I have been informed by my commander that, upon information in his possession as the result of investigation, he proposes to initiate action against me under AFR 35–66.

2. I have read AFR 35–66 and understand that, under that Regulation, I am entitled to an impartial hearing by a board of officers and that, at such hearing, I am entitled to counsel and to present evidence and call witnesses on my behalf. I hereby waive my entitlement to appear before the board and I request discharge without benefit of board proceedings.

3. I understand that, if this application is approved, my separation from the Air Force may be under conditions other than honorable and that I may receive an undesirable discharge, that this may deprive me of rights as a veteran under both Federal and State legislation, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in the Armed Forces or the character of discharge received therefrom may have a bearing.

4. Legal counsel has been made available to me. I voluntarily sign this application for discharge of my own free will.

(2) For airmen holding an appointment as a commissioned or warrant officer, Reserve of the Air Force, the format in (1) above will be changed by substituting as the second sentence of paragraph 2 of the application the following:

I hereby waive my entitlement to appear before the board and I request discharge from enlisted status and from all appointments held by me in the Air Force.

In this event, the enlisted signature element will be followed by the commissioned or warrant grade, component, and service number.

(3) If this application is signed by the airman, the documented case will be forwarded as outlined in paragraph 7.

b. *Referral to Board of Officers.* When the airman does not desire to submit the application for discharge outlined in a above, the documented case will be forwarded as outlined in paragraph 7 to the commander exercising general court-martial jurisdiction. When trial by court-martial is not appropriate, or if, although appropriate, the court-martial authority deems it inadvisable, he will convene a board of officers. Upon completion of the board proceedings, the documented case will be forwarded in accord with paragraph 7c.

(1) *Composition of Board.* The board of officers will consist of not less than three officers, at least one of whom is of field grade, for the purpose of determining the facts of the case and making recommendations for consideration by

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the Secretary of the Air Force Personnel Council on whether the airman should be discharged or retained in the service. (For procedures of boards of officers, see AFR 11-1.) One member of the board will be a legal officer or officer possessing legal experience, if available. If unavailable, a statement to that effect will appear in proceedings to explain the absence of a legal member. Care will be exercised in the selection of officers designated to serve on boards convened under this paragraph, to insure that:

(a) The board is composed of experienced officers of mature, unbiased judgment who are fully cognizant of the various aspects of cases of this nature.

(b) For an enlisted member of a Reserve component or if the airman has an appointment as a commissioned or warrant officer, Reserve of the Air Force, the membership of the board will include a majority of officers of Reserve components (see section 254(a), P.L. 476, 82d Cong.).

(c) If the airman has a Reserve commission, voting members will be senior to the respondent in his Reserve commissioned grade.

(d) For a female airman, the board will include a female officer.

(e) The board is provided with a competent reporter (or stenographer).

(f) In the event the airman has an appointment as a commissioned or warrant officer, Reserve of the Air Force, he will be advised that:

This proceeding is also directed toward arriving at a recommendation whether you should retain your appointment as a commissioned officer (or warrant officer), Reserve of the Air Force.

Care will be taken to insure that this advisement appears in the record of the proceedings.

(2) *Authorized Recommendations of Board.* The board of officers is authorized to make one of the following recommendations:

(a) Discharge with an undesirable discharge,

(b) Discharge with an honorable or general discharge, or

(c) Retention in the service.

c. *Action by Secretary of Air Force Personnel Council.* Final determination will be made after consideration of all evidence submitted. The Director, Secretary of the Air Force Personnel Council, will announce the decision of the Secretary of the Air Force by directing one of the following actions:

(1) Discharge under this Regulation with an undesirable discharge certificate. (An airman finally determined to be class III will not be furnished an undesirable discharge certificate. The final determination of whether an airman is a class II or class III homosexual rests with the Secretary of the Air Force.)

(2) Discharge under this Regulation with a general or honorable discharge certificate.

(3) Discharge under AFR 39-17 with an undesirable discharge or AFR 39-16 with a general discharge when it is determined that discharge under AFR 35-66 is not appropriate and that the evidence conclusively indicates that the airman is unfit (see AFR 39-17) or unsuitable (see AFR 39-16) for further military service.

(4) Retention of those personnel whose participation in a homosexual act is considered to have been a result of intoxication, immaturity, curiosity, or the undue influence of a person senior in years or grade.

7. **Reports.** Reports of cases which fall into the classes defined in paragraph 2b will be prepared and forwarded in accordance with this paragraph.

a. *Preparation of Correspondence.* The basic letter will contain the following information and will have the listed inclosures:

(1) Name, grade, service number, and organization of assignment of the person reported.

(2) Date of current entry on active duty or current enlistment.

(3) Normal date of separation (completion of current tour of duty and/or expiration of commission or enlistment).

(4) Prior service.

(5) Information, for airmen, on whether or not he holds a Reserve appointment, and, if so, commissioned (or warrant officer) grade and service number.

(6) Date of birth.

298 Digitized by Google

(7) Origin of investigation (why investigation initiated and by whom).

(8) Information and signature required by b below.

(9) Inclosure 1 will be a copy of OSI investigation to include statements of witnesses.

(10) Inclosure 2 will be medical evaluation to include, if feasible, a psychiatric study.

(11) Inclosure 3 will be the application for discharge of airman if submitted or the officer's or airman's statement that he does not desire to submit a resignation or an application for discharge.

(12) Inclosure 4 will be a copy of general court-martial charges and specifications, when appropriate.

b. *Forwarding Documented Case.* The documented case will be forwarded through channels to the commander exercising general court-martial jurisdiction. Each forwarding indorsement will contain detailed comments and recommendations (including, for enlisted personnel, the type of discharge certificate recommended with reasons therefor), and will be signed personally by the commander or officer second in command.

c. *Action by Commander Exercising General Court-Martial Jurisdiction.* The commander exercising general court-martial jurisdiction will determine whether trial by court-martial is appropriate. If trial is not appropriate, or if, although appropriate, the court-martial authority deems it inadvisable, he will, after referral to the board of officers if required, forward the completed case to the Director of Military Personnel, ATTENTION: Promotions and Separations Division, Headquarters USAF, Washington 25, D. C., for referral to the Secretary of the Air Force Personnel Council. His forwarding indorsement will be prepared in accord with b above and, in addition, will contain a statement of reasons why in his opinion trial is not appropriate or not advisable. Proceedings of the board of officers, if held, will be an added inclosure. An information copy of the case will be forwarded through channels to the commander of the major air command concerned unless otherwise directed by that commander.

d. *Disposition of Cases Not Warranting Forwarding.* When, in the opinion of the commander exercising general court-martial jurisdiction, the documented case is incomplete or lacks substantial evidence of homosexual acts or possession of homosexual tendencies, he may return the case for further investigation or documentation, or he may in those cases completely failing to support the charge, direct retention of the individual in the Air Force. This action may be taken prior to appointment of the board of officers if one is required. Cases will not be finally disposed of under this paragraph if the board of officers has been held and has recommended discharge, nor will an officer's resignation under AFR 36–12 be disposed of under this paragraph.

8. Action by Director of Military Personnel, Headquarters USAF:

a. *When Separation Is Warranted.* When the Secretary of the Air Force directs separation, the Director of Military Personnel, Headquarters USAF, will issue disposition instructions by electrically transmitted means directly to the appropriate commander, with information copy to intermediate commanders. The complete, documented case will be retained in Headquarters USAF.

b. *When Separation Is Not Warranted.* When separation is not warranted as determined by the Secretary of the Air Force, the Director of Military Personnel, Headquarters USAF, will notify the appropriate commander, with such special instructions as may be required in each case, by message, with information to intermediate commanders.

9. Report of Separation. The term to be entered in item 8, DD Form 214, "Report of Separation From the Armed Forces of the United States," as reason and authority for separation will be, for example, "AFR 35-66 and Msg AFPMP–4BC (number) Hq USAF, (date)....." When separation is accomplished under another Regulation, as provided herein, except AFRs 39–16 and 39–17, the entry in item 8 will include a reference to AFR 35-66 in addition to a reference to the Regulation under which separated. When discharge is directed under AFRs 39–16 or 39–17, reference will not be made to this Regulation.

10. Evaluation:

a. *Military Witnesses.* All information concerning any other homosexuals involved will be forwarded to the Director of Military Personnel, Headquarters USAF, Washington 25, D. C., for information and further evaluation. To guarantee the availability of essential military witnesses in subsequent proceedings, the appropriate commander will promptly ascertain the termination or transfer status of each witness. A witness will not be reassigned or separated from the service before the proceedings commence, except those whose terms of enlistment expire, in which case, instructions will be requested from the Director of Military Personnel, Headquarters USAF, with allowance being made for sufficient time for an

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answer to be received. A person held solely as a witness will not be confined.

b. *Restriction on Reenlistment or Reappointment.* Personnel, both officer and airmen, discharged or separated under this Regulation, are ineligible for reentry into the Air Force, either as officers or airmen.

c. *Consideration by Secretary of Air Force Personnel Board of Female Personnel.* When the person concerned is a female officer or an enlisted woman, the membership of the Secretary of the Air Force Personnel Board of Female Personnel will include a female officer.

d. *Reassignment.* Personnel on whom action under this Regulation is pending, will not be reassigned without approval of the Director of Military Personnel, Headquarters USAF.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

N. F. TWINING
Chief of Staff, United States Air Force

OFFICIAL:

K. E. THIEBAUD
Colonel, USAF
Air Adjutant General

DISTRIBUTION:
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300

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10

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY, 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
POLICY	Homosexual personnel should not be permitted to serve in any branch of the Armed Forces in any capacity. Prompt separation mandatory. Each branch should include information on homosexuality in its educational program. Female officer on all boards for females. Character of separation normally to be effected for all classes of homosexuals. Shall be similar and without distinction as to sex or status in all components of the Armed Forces.	True, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory. Character of separation normally to be effected for all classes of homosexuals shall be similar and without distinction as to sex or status. All facts, together with the individual's service record will be considered. Individuals who admit being confirmed homosexuals or admit committing one or more overt acts of homosexuality while in Service will normally be separated under other than honorable conditions if, because of the improbability of successful trial, they are sepa-	Homosexuality will not be tolerated in the Air Force. Prompt discharge of members who are confirmed homosexuals, or who habitually commit homosexual acts, or members with established or confirmed homosexual tendencies is mandatory. Exceptions to permit retention in the Service are proper only when the offense was committed, proposed, or attempted under the most unusual extenuating circumstances, when it is determined that the member does not have homosexual tendencies, and when the member's ability to perform military service has not been compromised. Intoxication is not an extenuating circumstance. The character of discharge for all classes of homosexuality will be similar and without distinction as to sex or status. A Class II will not be granted higher than other than honorable, except in unusual circumstances. Character of service rendered will be considered in Class III cases.	Homosexuality within the Naval Service is primarily a military problem. The commission of unacceptable social acts falls definitely into the category of the legal and disciplinary spheres. Barring psychosis, individuals should be held socially accountable for their acts. Those who have committed homosexual offenses should be held accountable for their failure of control. No individual should be permitted to transgress the rights of others. All socially unacceptable sexual acts should be punished in direct proportion to the seriousness of the offense, (1) as a deterrent to maintain proper order and morals, and (2) the corrective influence on the individual himself. No distinction is made in administrative hand-

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY, 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
POLICY (cont.)		rated administratively Offenders are subject to trial under Art. 125, UCMJ; however, in each case, it must be determined whether the interests of the service will be best served by such action, or by administrative discharge, or by medical or other treatment. One time offenders, whom psychiatry finds are not confirmed homosexuals, or who do not possess strong tendencies, shall normally be retained.		ling based upon whether the role of the offender was active or passive. One who voluntarily assumes a passive role i no less a homosexual than the active participant. The opinion of a medical expert that one who actively participated in a homosexual act is not a "true homosexual", is immaterial; in the case of the person making an indecent proposal, such opinion is material only if the proposal was made without intent to commit such act; in the case of a passive participant, such opinion is material only if the act was involuntary. Known homosexual individuals are military liabilities and must be eliminated from the service.

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY, 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
APPLICABILITY	All personnel, irrespective of sex, in any branch of the Armed Forces.	All Army personnel. Further delineation not specified.	All members of the Air Force.	Naval personnel on active duty. Includes females and reserves.
DEFINITIONS				
CLASS I	Those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or factual intimidation, thereby constituting the invasion of the rights of another, or any homosexual act with a child under the age of consent whether the child cooperates or not.	Same. A person under 16 years is under the age of consent.	Same, except must be committed by a member on active duty. Includes committing of a homosexual act with a minor, regardless of whether the minor cooperated. A minor is defined as a person under age 16.	Same.
CLASS II	Those cases wherein personnel have engaged in one or more homosexual acts or where evidence supports proposal or at-	Those cases wherein personnel subject to court-martial jurisdiction, including overt, confirmed homosexuals, have engaged	Same, except applies to a member on active duty. Makes no distinction in administrative handling of active or passive participants.	Same, except applies to persons while in the Naval Service.

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
DEFINITIONS (cont.)	tempt to perform an act of homosexuality, and which do not fall in the category of Class I.	in one or provable homosexual acts not Class I. Includes active and passive acts, and proposals, solicitations, or attempts even though no overt act was committed.		
CLASS III	Those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.	Overt, confirmed, homosexuals who have not engaged in any homosexual acts since entry into military service, and individuals who possess homosexual tendencies to such a degree as to render them unsuitable for military service.	Those cases where a member, while serving in the active military service, exhibits, professes, or admits homosexual tendencies, or habitually associates with individuals known to him to be homosexuals but where there are no proven specific homosexual acts or offenses. Evidence of pre-service acts will be considered in determining tendencies or associations. If it is determined person does not have homosexual tendencies, has not habitually associated with persons known to him to be homosexual, and that his ability to perform military service has not been compromised, consideration will be given to discharge under other appropriate regulations.	Same.

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ITEMS OF COMPARISON:	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
DISPOSITION:				
CLASS I	Trial by GCM mandatory.	Normally tried by GCM, unless found to be suffering from a major mental disorder. If successful prosecution is not deemed feasible, proceed as for a Class II case.	Consider for trial by GCM, if subject to GCM jurisdiction. In cases where the offender is not subject to GCM, or where GCM would not appear to be in the best interests of the Air Force, consider as a Class II.	Same.
CLASS II	Administrative separation under conditions other than honorable, unless the individual resists separation under such conditions, in which case he will be recommended for trial by court-martial. No distinction is made in administrative handling of persons committing active or passive acts. Government also has option of court martial.	Normally accomplished by administrative separation under conditions other than honorable, unless the individual resists such separation, in which case he will be recommended for trial by court martial or board action if trial is not feasible.	Normally accomplished by administrative separation under conditions other than honorable, unless the individual resists such separation, in which case he will be considered for trial by court martial. Should court martial not be feasible, refer officer cases to Director of Military Personnel, Headquarters, USAF, Washington, D. C., for decision as to whether action should be continued with a view toward terminating the officer's appointment, and in the case of enlisted, refer to a board.	Administrative separation under conditions other than honorable, unless the individual resists such separation, in which case he will be recommended for a trial by GCM. (Appropriate court martial.)

306

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR-635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
DISPOSITION (cont.)				
CLASS III	Administrative separation, with type of discharge taking into consideration all attendant facts and circumstances. Care should be exercised to distinguish between the confession which is founded upon true uncontrollable urges and the one that is made solely to avoid military service.	Administrative separation, with type of resignation as follows: Officer—unqualified resignation; Enlisted on specified term enlistments, or have less than three years, and active reservists—general or undesirable as determined by major commander. Enlisted with three years or more—AR 615-367, para. 8. In cases where individual admitted homosexual tendencies at time of induction, but was nevertheless inducted—honorable discharge. Board action provided for those cases wherein disposition must be determined.	Administrative separation, with board action on the GCM convening authority level for enlisted; administrative separation with those cases of officers who resist such separation, to be referred to Director of Military Personnel, Headquarters, USAF, for decision as to whether action will be continued with a view toward termination of the officer's appointment.	Administrative separation with resignation for the good of the service. Subsequent evaluation in departmental level and considering all facts and circumstances of the case will decide the final disposition.
CONTENTS OF REPORTS	Not specified	Statement of individual's birthdatdataStatement of individual's amount	Statement of individual's personal data to include name, grade, service num-	Full and complete statement from person concerned, or his state-

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY , 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
CONTENTS OF REPORTS (cont.)		of active service. Detailed signed statement from individual concerning his tendencies and any past homosexual acts, or a statement that he does not desire to make a statement. Statement of witnesses. Copy of CCM charges and specifications. Resignation or request for discharge. Waiver of board action by reservist. CO's comments and recommendations. Medical evaluation including a psychiatric study whenever possible.	ber, organization, date of current entry on active duty, normal date of separation, prior service, information for an airman or whether or not he holds an appointment as a Reserve of the Air Force and grade and service number, date of birth. Origin of investigation. Positive statement to the effect that respondent has availed himself of legal counsel, or of his declination thereto. Copy of the letter of notification. Copy of OSI Report of Investigation, to include statements of witnesses. Report of medical examination on SF88, with psychiatric consultation, if feasible. Resignation or request for discharge, or statement of declination to submit such document. Copy of CCM charges and specifications. CO's comments and recommendation in detail.	ment to the effect that he does not desire to make a statement. Statements of witnesses. Copy of sample CCM char and specifications. Resignation or agreement to accept discharge. Psychiatric or medical evaluation. CO's detailed comments and recommendations.

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
FORWARDING OF REPORTS AND LEVELS OF FINAL ACTION AND REVIEW	Not specified.	Officer cases—direct to Adjutant General, Dept. of the Army, Washington 25, D. C., Attn: AGPO. Enlisted cases—direct to the commander of the appropriate continental Army, the military District of Washington, the overseas commander in a U. S. territory or possession, or other major overseas commander.	Through channels to the Commander exercising GCM jurisdiction. In cases of officers, this Commander will forward to Director of Military Personnel, Headquarters, USAF, Attn: Promotions & Separations Division, Washington 25, D. C. Major commanders may take final action on airmen or delegate to GCM authority.	Direct to the Chief of Naval Personnel or CMC for board review and final action.
BOARD ACTION CLASS I	A central board of review at departmental level is recommended for all cases. However, due to peculiarities of each service, administrative details left to individual services.	GCM	GCM	GCM
CLASS II	-do-	YES	YES	YES
CLASS III	-do-	Permissive for enlisted.	YES	YES
BOARD CONVENING AUTHORITY	Recommends departmental level	Not indicated. (Major commander?)	Officer exercising GCM jurisdiction	Departmental level.

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
BOARD COMPOSITION	In cases involving female personnel, a female officer should be a member of all boards.	Not specified.	Commissioned officers who should be fully cognizant of the various aspects of cases of this nature. Three voting members, preferably of field grade, but in no instance below grade of Captain. If the respondent holds an appointment as a commissioned or warrant officer of the reserve of the Air Force, majority of the members will be reserve, and senior in permanent and temporary grades to the grade of the respondent; the President will be a reserve Colonel or higher. A Judge Advocate - to act as legal advisor. A medical officer, when medical advice is needed or when respondent is a member of the medical service. A female - if respondent is a female. A recorder.	Each case reported to the Department will be referred to an appropriate board of officers in the Department.) all cases involving female personnel, a female officer shall be a member of all such boards.)
RIGHT OF REPRESENTATION BY RESPONDENT	Not specified.	Not specified.	Yes. In all cases.	Not specified.
TYPES OF RESIGNATIONS SUBMITTED: CLASS I	None.	None.	None.	None.

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ITEMS OF COMPARISON	DEPARTMENT OF DEFENSE SECDEF MEMO OF 11 OCT 1949	DEPARTMENT OF THE ARMY AR 635-89 OF 21 JAN 1955	DEPARTMENT OF THE AIR FORCE AFR 35-66 OF 23 JULY 1956	DEPARTMENT OF THE NAVY SECNAVINST 1620.1 OF 5 JUNE 1953
TYPES OF RESIGNATIONS SUBMITTED: (cont.)				
CLASS II				
Officers	Other Than Honorable	Other Than Honorable	Other Than Honorable	Other Than Honorable
Enlisted	Other Than Honorable	Other Than Honorable	Other Than Honorable	Other Than Honorab
CLASS III				
Officers	Not specified.	Unqualified.	General.	Other than Honorable.
Enlisted	Not specified. (Depends on attendant facts and circumstances.)	Serving on specified term enlistments, or who have not served three years - General or undesirable. Served three years or more - General. Those who indicated their homo tendencies upon induction, and were still inducted—honorable.	General.	Other than Honorable. (Subject to final review. May be raised.)
IS BOARD ACTION REQUIRED IN ALL CASES EXCEPT CLASS I PRIOR TO FINAL ACTION?	Recommended.	No.	Yes.	Yes.
MAY BOARDS RECOMMEND:				
1. Higher form of discharge?	Not indicated.	Not indicated.	Yes.	Implied.
2. Retention?	-do-	-do-	-do-	-do-

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CHRONOLOGICAL DEVELOPMENT

POLICY AND PRACTICE ON DISPOSITION OF NAVAL PERSONNEL INVOLVED IN HOMOSEXUAL ACTIVITY

A. PRIOR 1943 -

1. UNDER ART 22, ARTICLES FOR THE GOVERNMENT OF THE NAVY; GENERAL COURT MARTIAL:

- OFFICER: DISMISSAL, 12 YEARS CONFINEMENT AT HARD LABOR

- ENLISTED: 10 YEARS CONFINEMENT AT HARD LABOR, DISHONORABLE DISCHARGE

2. ADMINISTRATIVELY:

- AS UNFIT, UNDER BUMAV, BUPERS MANUAL. GENERAL STANDARDS OF UNFITNESS.

a. IN 1913 FIRST STANDARDS OF UNFITNESS AND SAFEGUARDS PROMULGATED FOR GUIDANCE OF COMMANDING OFFICERS.

b. IN 1945 REQUIRED TO OBTAIN BUPERS APPROVAL. 1ST BOARD ESTABLISHED IN BUREAU.

(NO EXPLICIT HOMOSEXUAL POLICY PRIOR TO 1943)

B. PROMULGATION SECNAV LTR OF 1 JAN 1943

1. SOURCE: RECOMMENDATION COMMITTEE ON NEURO PSYCHIATRY, NATIONAL RESEARCH COUNCIL.

a. DUE LARGE WARTIME INFLUX OF HOMOSEXUALS.

2. POLICY: RECOGNIZED TWO CLASSES OF HOMOSEXUALS.

a. CLASS I - AGGRESSOR, WITH FORCE. MANDATORY GENERAL COURT MARTIAL.

b. CLASS II - ALL OTHER HABITUAL, OVERT HOMOSEXUALS, ON SUFFICIENT EVIDENCE OF IN-SERVICE ACTS OR ATTEMPTS; SUBJECT TO UNDESIRABLE DISCHARGE BY ADMINISTRATIVE ACTION OF COMMANDING OFFICER.

3. REQUIRED ACCEPTANCE UNDESIRABLE DISCHARGE BY INDIVIDUAL TO ESCAPE GENERAL COURT MARTIAL.

4. EFFECTS:

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a. PROVIDED FOR ADMINISTRATIVE SEPARATION AS UNFIT OR TRIAL BY GENERAL COURT MARTIAL OF ALL PERSONS INVOLVED IN IN-SERVICE HOMOSEXUAL ACTS OR ATTEMPTS WHICH REPRESENT HABITUAL CONDUCT.

b. FAILED TO PROVIDE CLEARLY FOR ELIMINATION OF CURRENT CLASS III (TENDENCIES ONLY, PRE-SERVICE ACTS, ETC.)

C. PROMULGATION BUPERS LTR OF 28 JAN 1944

1. SOURCE: FLEET INQUIRIES ON PERSONNEL NOT FALLING CLEARLY WITHIN EXISTING DEFINITIONS.

2. POLICY: RECOGNIZED THIRD CLASS OF HOMOSEXUALS:

a. ADMITTED ACTS OR TENDENCIES, BUT NO PROVABLE ACTS WHILE IN NAVAL SERVICE. (ASSIGNED NO CLASS DESIGNATION).

3. REQUIREMENTS: (FOR NEW CLASS ONLY)

a. STATEMENT BY INDIVIDUAL RELATIVE ACTS/TENDENCIES

b. PSYCHIATRIC OR MEDICAL REPORT

c. COMMANDING OFFICER'S COMMENT

d. BUPERS APPROVAL TO DISCHARGE

4. LETTER NOTED PROBLEM OF HOMOSEXUAL ADMISSIONS TO ESCAPE MILITARY SERVICE.

5. EFFECT: COMPLETED PROVISION FOR ELIMINATION ALL ACTIVE AND "POTENTIAL" HOMOSEXUALS, AND PARTICIPANTS IN HOMOSEXUAL ACTIVITY.

D. PROMULGATION BUPERS LTR 24 JAN 1945.

1. ADMONITION TO COMPLY WITH EXISTING SECNAV AND BUPERS LETTERS.

2. DIRECTIVE TO SUBMIT DOUBTFUL CLASS II CASES FOR BUPERS DECISION.

E. PROMULGATION CHANGE NO. 7, BUPERS MANUAL, 19 July 1945.

REQUIRED BUPERS PRIOR APPROVAL, ALL UNDESIRABLE DISCHARGES, ANY CAUSE OR REASON.

F. PROMULGATION SECNAV LETTER 14 JULY 1949.

1. SOURCE:

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a. NAVAL CLEMENCY BD RECOMMENDATION OF ABOUT FEB 1948 FOR CONSOLIDATED DIRECTIVE.

b. REPORT OF COMMITTEE FOR REVIEW OF PROCEDURES FOR DISPOSITION OF NAVAL PERSONNEL INVOLVED IN HOMOSEXUAL OFFENSES DATED 5 AUG 1948.

2. POLICY:

a. MAINTAINED EXISTING CLASS I, II AND A THIRD CLASS (NO DISCHARGE ACTS)

b. REQUIRED BUPERS BOARD ACTION AND APPROVAL, ALL CASES, FOR ADMINISTRATIVE DISCHARGE.

c. EXPANDED BACKGROUND INFORMATION AND INSTRUCTIONS.

d. REQUIRED INDIVIDUAL'S STATEMENT AND ACCEPTANCE OF UNDESIRABLE, NOTING EFFECT ON VETERAN'S RIGHTS/BENEFITS.

e. SPECIFIED TRIAL IF OTHER DISCIPLINARY ACTION PENDING. TO INCLUDE CHARGES AND SPECIFICATIONS ON HOMOSEXUAL OFFENSE.

3. PROMULGATION SECNAV LTR OF 10 DEC 1949

4. SOURCES:

a. SECNAV MEMO OF 11 OCT 1949

FOLLOWED ON

b. REPORT OF MILITARY PERSONNEL POLICY COMMITTEE (PROJECT X-16) OF 24 AUG 1949

2. POLICY AND PRACTICE:

a. ESTABLISHED THIRD CLASS AS CLASS III.

b. ESSENTIALLY AS BEFORE IN ALL RESPECTS.

B. STUDY, 1952

1. BASIS: ASST SECNAV (MPR) MEMO OF 28 JULY 1952 DIRECTING STUDY OF PROCESSING CLASS III.

2. RESULT:

a. REPORT OF COMMITTEE TO REVIEW POLICY ON DISCHARGE OF HOMOSEXUALS OF 24 OCT 1952.

(1) RECOMMENDED RETENTION 6 MONTHS' STUDY

(2) NO OTHER RECOMMENDATIONS

(3) LETTERS TO CHANGE POLICY ON ALL EXCEPT CLASS I CASES.

315

b. DISSENTING REPORT, SAME COMMITTEE (8 OF 15 MEMBERS IN DISSENT) OF 28 NOV 1952.

(1) RECOMMENDED NO ESSENTIAL CHANGE IN CURRENT POLICY BEYOND BROADENED, UNRESTRICTIVE RESTATEMENT.

I. SECNAV INSTRUCTION 1620.1 OF 5 JUNE 1953

1. REISSUED UNCHANGED WITHIN DIRECTIVES SYSTEM, SECNAV LTR OF 10 DEC 1949

a. EXCEPTION: PRESCRIBED WARNING OF SUSPECTS UNDER ARTICLE 31.

J. BUPERS INSTRUCTION 1620.3 OF 6 OCT 1953

INFORMATION CONCERNING HOMOSEXUALITY

K. PROPOSED REVISION OF SECNAV 1620.1 (1955-56)

1. BASIS:

a. ASS'T SECNAV (P&RF) PERSONAL MEMO OF 3 JUNE 1955; TO PERMIT RETRACTION STATEMENTS MADE UNDER DURESS

b. ASS'T SECNAV (P&RF) MEMO OF 19 NOV 1955 IN CLASS II CASES ONLY, TO REDUCE MANDATORY GCM TO TRIAL BY ANY APPROPRIATE COURT MARTIAL: IN CLASS I CASES, GCM REMAINS MANDATORY.

2. PROGRESS: DRAFT III (DRAFT IN ENLISTED PERFORMANCE DIVISION SINCE APRIL 1956.

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INDEX

TAB 1. Ass't SecNav (P&RF) Memo to CNP & JAG of 19 Nov 1955 (Increased Flexibility in Court-Martial Procedure for Class II Homosexuals)

TAB 2. Memo from CDR O'Malley to NDRB of 8 Jun 1955 (Encl Mr. Pratt's penciled memo of 3 Jun 1955 and MarCorps memo of 19 May 1955 to SecNav)

TAB 3. BUPERS Instruction 1620.3 of 6 Oct 1953 (Info concerning homosexuality)

TAB 4. SECNAV Instruction 1620.1 of 5 Jun 1953 (Procedure for disposition of cases of homosexuality)

TAB 5. Memo for Ass't SecDef of 28 Nov 1952 (Dissent report of Committee)

TAB 6. Memo for Ass't SecDef of 24 Oct 1952 (Committee report encl roster of members)

TAB 7. Under SecNav Memo of 16 Aug 1952 to BuMed, JAG, MarCorps (Request for nominees to serve on Committee)

TAB 8. Ass't SecDef Memo of 28 Jul 1952 to Secretaries of Army, Air Force, Navy, and Chairman, Armed Forces (Medical Policy Council) Request for review on DOD policy on Class III)

TAB 9. Under SecNav Memo of 16 Dec 1949 to Chairman, Personnel Policy Board (Comments on principal features of the Board's approved policy)

TAB 10. NDB 49-882 of 10 Dec 1949 (Procedure for the disposition of cases of homosexuality involving naval personnel)

TAB 11. Memo dtd 11 Oct 1949 from Chairman, Personnel Policy Board to Secretaries of Army, Navy & Air Force (Policy approval of Classes I, II, and III)

TAB 12. Committee Report of 24 August 1949 (Project No. M-46)

TAB 13. SecNav ltr of 14 Jul 1949 (Homosexuality - Procedure for disposition of cases involving naval personnel)

TAB 14. SecNav ltr of 18 Oct 1948 (Request for comments on proposed directives and recommended solutions)

TAB 15. Committee Report of 5 Aug 1948 (Referenced only)

TAB 16. BuPers ltr of 24 Jan 1945 (Disposition of homosexuals and those persons having homosexual tendencies, enlisted personnel)

TAB 17. BuPers C/L of 28 Jan 1944 (Procedure for disposition of homosexuals among personnel in the U. S. Naval Service)

TAB 18. SecNav ltr of 1 Jan 1943 (Procedure for disposition of homosexuals among personnel in the U. S. Naval Service)

TAB 19. INDEX FORM of Chronological Development of Policy and Practice on Disposition of Naval Personnel Involved in Homosexual Activity.

TAB 20. NARRATIVE FORM of Chronological Development of Policy and Practice on Disposition of Naval Personnel Involved in Homosexual Activity.

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THE ASSISTANT SECRETARY OF THE NAVY
PERSONNEL AND RESERVE FORCES
WASHINGTON

MEMORANDUM

To: Chief of Naval Personnel
Judge Advocate General

Subj: Increased Flexibility in Court Martial Procedure for Class II Homosexuals

Ref: (a) SECNAV INSTRUCTION 1620.1

1. During my visit to the SIXTH Fleet, I was briefed extensively by the Legal Officer on ComSIXTH Fleet's Staff. There are only three Legal Officers in addition to him. If a General Court Martial is convened, all three of the other Legal Officers have to be called in; one to serve as Law Officer, one as Trial Counsel, and one as Defense Counsel. Hardy himself, has to stay aloof in order that he may review the proceedings. Accordingly, convening a General Court Martial can seriously interrupt the normal course of business.

2. Commander Hardy feels that there are a lot of Class II homosexual cases where the sentence would not be more severe than six months confinement and a Bad Conduct Discharge. In such cases, he believes that trial by Special Court Martial should be permitted.

3. Accordingly, I propose to modify reference (a) as follows: Change paragraph 5b(2) to provide that the offender will be recommended "for trial by the appropriate type of court martial". Paragraph 5b(3), (4), and (5): Delete the word "general" wherever it appears before court martial, except the last line of subparagraph 5b(3)(a)2 and 5b(3)(b)2.

4. Originally, he suggested that Special Courts should be discretionary for the Fleet Commander in Class I cases as well, but I think we had better let that stay the way it is.

Albert Pratt

318

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TAB 2

Office Memorandum · UNITED STATES GOVERNMENT

TO : COMMANDER POWELL, NAVY DISCHARGE REVIEW BOARD DATE: 8 June 1955

FROM : COMMANDER O'MALLEY

SUBJECT: NDRB case of Robert Franklin [redacted], ex-CPL, 1346632, USMC

Encl: (1) NDRB Review of discharge Exhibit, approved by Mr. Pratt
(2) Copy of CMC memo DRE-2331-jv of 19 May 1955 to Secnav
(3) Mr. Pratt's memo of 6/3/55 to CDR O'Malley

The attached correspondence is forwarded, pursuant to our telephone conversation of this date.

Respectfully,

[signature]

CDR. F. O'MALLEY

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D'n

Carbon amendment
to Section Sixty.
Marine Corps interp. is
not correct. Public land
should be allowed to
patented NT. Credit
made under Lieus

6/3

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From: Commandant of the Marine Corps
To: Secretary of the Navy

Subj: Comment and Recommendation in the case of Robert F. MAXIM, ex-Corporal, U. S. Marine Corps (1346632)

1. The view expressed by the majority of the Navy Discharge Review Board in this case is concurred in. Resistance to administrative separation under conditions other than honorable is considered to have ceased when the individual, having been confronted with a choice, manifests his decision by signing an agreement to accept such discharge in lieu of trial by court-martial. Except in the most unusual cases, this choice is considered to be irrevocable insofar as the individual is concerned by reason of the following:

a. Paragraph 3b (2) of the applicable instruction states in part, "Disposition will be accomplished by administrative separation under conditions other than honorable, unless - - - - - -." (Emphasis supplied). This is interpreted to indicate that trial by court-martial of this type of case is to be avoided provided the individual concerned agrees. It is submitted that this interpretation is borne out by the provisions of paragraph 3b (4). This provision indicates that there must be certain other circumstances present before trial by court-martial may be ordered without giving the individual a choice or contrary to his choice.

b. The choice of the individual is an affirmative act on his part presumed to have been made after full consideration of the alternative involved.

c. Sound administration of the applicable instruction requires that the individual not be confronted with the alternatives until such time as the available evidence indicates that a conviction by court-martial is probable. If this is not the circumstance and investigative possibilities have been exhausted, the result should be that the individual is [illegible] III or the matter is closed without further action.

d. Also, sound and efficient administration requires that where an individual is granted a choice of procedures to be taken in any matter concerned with his service, the choice must at some time be final otherwise vacillation will unduly impede or obstruct disposition of the particular matter. Accordingly, alternatives having been offered and a choice having been made, the decision should be irrevocable so far as the individual is concerned.

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DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington 25, D. C.

BUPERS 1620.3
Pers-B22-ml
6 October 1953

RESTRICTED
SECURITY INFORMATION
BUPERS INSTRUCTION 1620.3

From: Chief of Naval Personnel
To: All Ships and Stations

Subj: Information concerning homosexuality

Ref: (a) SECNAVINST 1620.1

Encl: (1) Information concerning homosexual activity in the naval service

1. Purpose. It is the intention of this Instruction to present information of an instructional and educational nature with a view to decreasing the incidence of homosexual offenses by naval personnel through a better understanding of the nature of the offense and the results thereof.

2. Background. It appears evident that many officers and enlisted personnel are not sufficiently aware of the nature and inherent dangers of homosexual acts to avoid becoming involved therein, or to know the procedure required in the disposition of such cases. The disgrace and humiliation devolving on those persons separated as a result of homosexual acts is attested by the many letters received in this Bureau from ex-service personnel requesting an opportunity to redeem themselves through reenlistment. The responsibility of the Navy Department to attempt to prevent young persons in the naval service from falling victim to this vicious and degenerate practice is evident. In this connection, all recruits are now receiving instruction on the subject matter during recruit training. It is anticipated that instruction of a similar nature will be given to officer candidates during their school training and to officer students of the General Line School, commencing in the near future.

3. Action. It is desired that the full contents of this Instruction and pertinent parts of reference (a) be carefully explained to each officer in the naval service in order that he may be better qualified to fulfill his responsibilities regarding the welfare of all personnel under his command. It is intended that the material contained in enclosure (1) be used in an educational and instructive manner with the thought that by so doing, it may alert service personnel to the dangers inherent in homosexuality and so may prevent unsuspecting individuals from becoming involved in this degenerate practice.

J. L. HOLLOWAY, Jr.
Chief of Naval Personnel

RESTRICTED

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INFORMATION CONCERNING HOMOSEXUAL ACTIVITY IN THE NAVAL SERVICE

1. General Information. Certain general misconceptions regarding the subject of homosexuality are prevalent in the service. Some of these misconceptions are:

a. That a homosexual can be easily detected by his or her characteristics of speech, dress, etc. This is completely erroneous in the majority of the cases. Personnel should not rely on this "safeguard" in selecting friends and companions.

b. That venereal disease cannot be contracted through homosexual acts. In a New York clinic one out of every four persons treated for venereal disease admitted to recent homosexual activity.

c. That homosexuals are "born" not "made." Reliance on this false conception to avoid entrapment is dangerous. There are many factors that enter into the final determination as to whether an individual turns to homosexualism or remains a normally adjusted person. Experimenters can easily become homosexuals.

d. That the Navy will "cure" its homosexual persons. The Navy has neither the facilities nor the personnel nor is it part of the Navy's mission to attempt to treat homosexual persons.

2. Clarification of Certain Aspects

a. Definition. For the purposes of this discussion, a homosexual act consists of any act of sexual gratification with another person of the same sex. Such an act is a violation of the moral code of this country and of Federal law (Uniform Code of Military Justice). Under the Uniform Code of Military Justice, whether tried under Article 125: Sodomy, or Article 134: Indecent or Lewd Acts With Another, a homosexual act is punishable by 5 years' imprisonment and a dishonorable discharge. The law and the Navy Department do not attempt to determine or to label an offender as a confirmed homosexual. Rather, disciplinary action is taken for engaging in an act or in conduct which constitutes the commission of an offense. From this point of view, the commission of a homosexual act is considered a military rather than a medical problem. Early separation from the service of persons who commit one or more homosexual acts or admit to uncontrollable homosexual tendencies is essential for the morale, welfare, and security of the Navy as a whole. Normally such persons will be separated by BuPers under conditions other than honorable.

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b. Active Versus Passive. It appears that many service personnel feel that a passive homosexual act is not as reprehensible as one in which the individual concerned takes an active role. It should be clearly understood that in the view of the Navy Department and of Federal law, a so-called passive member in a homosexual act is in all respects as guilty of an offense as is the active partner. It takes two persons to commit a homosexual act. It should also be made evident that the willing but passive participation in a homosexual act is as equally degenerate and morally unacceptable as is the active participation. In view of the foregoing, the Navy Department makes no differentiation between active and passive partners in determining appropriate disciplinary action or the type of discharge to be awarded.

c. Relation of Intoxication to Homosexual Acts. In many homosexual cases referred to the Department, the offender contends that he was under the influence of intoxicating liquor and therefore not in full control of his reactions. It is unquestionably true that the vast majority of homosexual acts are committed after the individuals concerned have consumed varying amounts of alcoholic beverages. However, drunkenness is not an acceptable excuse for the willing participation in a homosexual act in any greater degree than it would be for the commission of other offenses.

d. The Onetime Offender. From time to time the Navy Department receives representations to the effect that the "onetime offender" should neither be punished nor separated from the naval service. Various supporting statements for these representations are supplied, running from alleged youthful curiosity, thrill-seeking, lack of knowledge of the seriousness of the offense, intoxication, etc. It has been the experience of the Navy Department that, first, it is a practical impossibility to determine in many cases whether the offender actually has committed only one offense; secondly, no one can attest positively that the individual concerned would not repeat the initial act should a similar set of circumstances arise. In addition, the onetime offender is possibly even more susceptible to blackmail, coercion, and general mental duress than is his confirmed counterpart. The risks of retaining large numbers of such persons with the resultant possible contamination of others and the lowering of naval morale and efficiency make such action highly undesirable as a general measure. Each case of this nature is considered individually on its own merits by a board of officers in BuPers and disposition is predicated upon the attendant circumstances. In any event, the commission of a single homosexual act, whether actively or passively, is as much a crime and an offense under the provisions of the Uniform Code of Military Justice, a Federal law, as is the commission of a single act of theft. It should be made quite clear that the Navy Department cannot and will not condone violations of this law.

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3. Some Characteristics of Homosexuals. It is a prime characteristic of homosexuals to zealously attempt to enlarge the group of social outcasts to which they belong. Therefore, the retention in the naval service of any single individual who may through force or other means invade the rights of others cannot be considered. A second characteristic of a homosexual person is the apparent desire, once caught, to talk freely to investigating officers, agents, or others; such a talk normally develops into a complete exposition of the individual's homosexual past including a recounting of names, dates, and places in great detail. It can be seen from this that a single act committed by any service person may, and probably will, come to official notice at a later date. A further characteristic of the homosexual group is the practice of maintaining lists of other known homosexuals throughout the country. Lists of this nature not infrequently fall into the hands of Government investigating agencies. Thus, transfers to distant points do not constitute a safeguard from eventual discovery.

4. Security. One of the primary reasons for the necessity of promptly separating persons involved in homosexual activity is the lack of security inherent in this group of individuals. Lists of names of confirmed homosexuals are not difficult for subversive agents to obtain. The obvious blackmailing opportunities open to such agents leave the homosexual without any safeguard or recourse against such tactics except to provide the information desired. It should be evident that persons subject to such external pressure particularly during times of war or national emergency are exceptionally poor military risks and are, in fact, positive liabilities.

5. Undesirable Practices. There are certain practices occasionally resorted to by service personnel which may lead them unwittingly into the homosexual group or which may result in other serious consequences. The most prominent of these is the practice of consorting with known homosexuals, either civilians or service personnel, or frequenting taverns or other places known to be the resorts of homosexuals with the possible intent of obtaining free drinks, food, or money from these perverts. Occasionally this practice extends to attempts to blackmail the homosexual into offering money to be rid of the service person. These and other similar practices can result in heavy fines and long jail sentences if convicted by civil authorities and discharge by reason of such conviction, or confinement and discharge under other than honorable conditions if tried by court-martial. In addition, such practices often lead to the more or less unintentional, inadvertent commission of a homosexual act and can easily result in the individual being classified by others as a homosexual, purely through these associations.

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6. Reporting Acts or Attempts. Many instances occur where a homosexual attempts to perform a perverted act on an unsuspecting and unwilling person. Such acts most frequently occur when the unwilling person is either asleep or otherwise unable to repel the advances at the onset. These attempts are occasionally witnessed by persons not directly involved. Persons so victimized as well as those who have witnessed such an attempt should first positively identify the intruder and then report all circumstances as soon as possible either to his division officer, duty officer, or other available superior in command. This report should be made regardless of whether the attempted act occurs aboard ship or ashore. Care should be exercised in making such reports to insure first, that a homosexual act actually was attempted and, secondly, that the individual reported was the person who attempted the act. A person should not be reported purely on unfounded suspicions, appearance, or associations. Nor should service personnel other than designated and authorized persons attempt to perform investigative work in this or any other field. Persons who resist completely an attempted homosexual act and make a prompt report of all circumstances are not subject to disciplinary action in connection with the attempted act.

7. Departmental Coordination. It frequently appears that service personnel commit homosexual acts with civilians or members of another branch of the armed services either under the misapprehension that such an act does not constitute a military offense or that there is small probability of the offense being reported to Navy officials. It is pointed out that investigations by civilian agencies and all branches of the armed services are closely coordinated in this matter. Likewise, arrests and convictions of service personnel by civil authorities are made known to the individual's commanding officer. The latter is then required to process the individual in the same manner as though he had committed the act on a naval ship or station. It must be recognized that as long as a member of the naval service is on active duty or otherwise subject to naval court-martial jurisdiction, the commission of a homosexual act is an offense punishable under the code regardless of the place where the offense is committed, the status of other participants, or other similar factors involved.

8. End Results of Commission of Homosexual Acts. In accordance with the provisions of SECNAV Instruction 1620.1, persons who are determined to have committed or to have attempted to commit a homosexual act while in the naval service must be offered the option of trial by general court-martial or separation under conditions other than honorable, unless force has been used in the commission of the act in which event trial by general court-martial is mandatory. If

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tried by court-martial and found guilty, a sentence of 5 years' imprisonment and a dishonorable discharge may be awarded. If the individual elects to be separated under conditions other than honorable, he loses substantially all rights and privileges as a veteran and finds humiliation, degradation, and difficulty in obtaining suitable employment. In either case, the effects are lasting and unavoidable. Since the commission of a homosexual act is entirely within the control of the individuals concerned, no one else can be held accountable for the drastic results which are the inevitable outcome of such offenses. It is hoped that the information contained herein will help prevent the unwitting, unsuspecting, or naive serviceman from becoming involved in this degrading and degenerate practice.

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DEPARTMENT OF THE NAVY
Office of the Secretary
Washington 25, D. C.

SECNAV 1620.1
Pers-B221-mb
5 June 1953

SECNAV INSTRUCTION 1620.1

From: Secretary of the Navy
To: All Ships and Stations

Subj: Procedure for the disposition of cases of homosexuality involving naval personnel

1. Purpose. To promulgate a uniform procedure relative to the disposition of personnel in cases involving homosexual tendencies or acts.

2. Reissuance and Cancellation. To reissue, unchanged, the instructions in SecNav letter of 10 December 1949 (NDB Jul-Dec 1949, 49-882, pp. 55-57) which are hereby canceled by this Instruction.

3. Background. Homosexuality within the naval service is primarily a military problem. However, insofar as the individual is concerned, homosexuality is a medical problem because it is a condition which must be considered at variance from the normal, mature, adult sexual development. While the psychological mechanism of homosexuality is primarily a psychiatric problem, on the other hand, the commission of unacceptable social acts falls definitely into the category of the legal and disciplinary spheres. Barring psychosis, individuals should be held socially responsible and accountable for their acts. Those who have committed homosexual offenses should be held accountable for their failure of control. Likewise, no individual should be permitted to transgress the rights of others. All socially unacceptable sexual acts should be punished in direct proportion to the seriousness of the offense itself, ever bearing in mind the need of the dual purpose of military justice, (1) as a deterrent, to maintain proper order and morals, and (2) the corrective influence on the individual himself. Each case needs careful, thorough, and individual study so that final treatment, action, or disposition will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls.

4. Action

a. Known homosexual individuals are military liabilities and must be eliminated from the service. Commanding officers receiving information indicating that a person in the naval service possesses homosexual tendencies or has engaged in an act of homosexuality

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shall inquire thoroughly and comprehensively into the matter and ascertain all the facts and circumstances of the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

b. It is essential that all the facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained. Except where the individuals are brought to trial by general court-martial, a complete report of the recorded facts shall be made to the Department, by expeditious means. In cases wherein the evidence thus far developed, considered in the light of all surrounding circumstances, is productive of reasonable doubt as to whether a homosexual tendency actually exists or a homosexual act, attempt, or proposal has in fact been committed or made, the commanding officer may hold the matter in abeyance for a limited time pending his first opportunity to seek assistance or advice from a representative of the Office of Naval Intelligence experienced in investigation of such cases, or from experienced qualified medical experts as regards characteristics which may support or negate the existance of tendencies claimed or suspected.

c. Care must be exercised that all persons involved are completely investigated and reported and that appropriate information is expeditiously forwarded to other commands as necessary to complete all cases. All information concerning any other homosexuals involved, either civilian or service personnel, will be forwarded to the Department for information and further evaluation. In order to guarantee the availability of essential witnesses in a subsequent court-martial proceeding, where such are necessary, no personnel shall be separated from the service without prior reference to the Department until the investigation and disposition of other personnel involved shall have been concluded. No person held solely as a witness shall be confined, unless confinement be deemed reasonably necessary for his own protection.

d. Each case of homosexuality reported to the Department in accordance with the provisions of this directive shall be referred to an appropriate board of officers in the Department who will give full consideration to all the facts and circumstances in the case and will make recommendations as to the disposition to be directed. In all cases involving female personnel, a female officer shall be a member of all such boards.

e. This procedure shall be followed without exception in all cases of homosexuality arising among personnel, male and female, of the Navy and Marine Corps, Naval Reserve, and Marine Corps Reserve

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while on active duty. The word Department is used in connection with the submission of reports and shall be construed to mean either the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate.

5. Classification and Procedures. Personnel coming within the purview of this directive fall into several categories which may or may not overlap and which will be more or less complicated by facts and circumstances peculiar to the individual case. These cases, however, are generally classified and the normal disposition for each class will be as follows:

a. (1) Class I is defined as those cases accompanied by assault or coercion as characterized by an act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation, thereby constituting invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

(2) Disposition. Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

b. (1) Class II is defined as those cases wherein personnel, while in the naval service, have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of class I above.

(2) Disposition. Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the service under such conditions, in which case he will be recommended for trial by court-martial. Detailed procedure follows:

(3) Sample charges and specifications for trial by general court-martial shall be drawn and the accused shall be confronted with them. He shall be offered the following alternatives:

(a) 1. Officers shall be informed that acceptance will be recommended of a resignation in tenor as follows: "I hereby tender my resignation for the good of the service and to escape trial by general court-martial. I understand that my separation from the naval service effected by acceptance of this resignation will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that

330 Digitized by Google

I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of separation therefrom may have a bearing."

2. If an accused officer refuses to submit his resignation so worded he shall be recommended for trial by general court-martial. Recommendations for trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

(b) 1. Enlisted persons shall be informed that a signed statement in tenor as follows, will probably receive favorable action: "I hereby accept an undesirable discharge for the good of the service and to escape trial by general court-martial. I understand that my separation from the naval service effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing."

2. If an accused enlisted person refuses to sign a statement so worded, he shall be recommended for trial by general court-martial. Recommendations for trial shall be prepared and submitted to the officer exercising general court-martial jurisdiction.

(4) While the foregoing is the normal procedure that should be followed in these cases, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if a superior authority considers the circumstances to render such action essential in the interest of the naval service or the public. Likewise, where personnel have other substantial charges against them for which, in the opinion of the commanding officer and the convening authority, they should be brought to trial by general court-martial, such trial should be ordered and appropriate charges preferred, including charges setting forth the alleged homosexual acts or offenses.

(5) The commanding officer shall submit to the Department a complete report of each class II offender who is afforded, and who elects, the alternative of resignation or undesirable discharge. In all cases the report should include: A full and complete statement from the officer or enlisted person concerned, or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of the sample general court-martial charge and

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specification(s); resignation of the officer or agreement by the enlisted person to accept an undesirable discharge as worded in paragraph 5b(3) above; and the commanding officer's detailed comments and recommendations. The commanding officer's report will include a psychiatric or medical evaluation of the person concerned.

c. Class III is defined as those rare cases wherein personnel only exhibit, profess, or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Disposition. All such cases shall be carefully evaluated with a view toward prompt administrative separation and the type of discharge to be given by the Department will take into consideration all attendant facts and circumstances.

(2) In these cases it is extremely important that every attempt be made to distinguish between personnel having true homosexual tendencies and those who are professing such tendencies solely for the purpose of avoiding military service. The person admitting homosexual tendencies and/or preservice acts shall be advised to submit a written statement, setting forth in fullest detail his history with reference to his condition. Those admitting tendencies as well as those who do not will be instructed that they are privileged to submit such written statement as they may see fit, and, if they do not desire to submit a statement, to set forth that fact in writing. Likewise, such a person may be informed that he is privileged to submit his resignation or request for discharge under other than honorable conditions for the good of the service, and upon receipt of such resignation or discharge request, all facts will be considered and decision made as to whether the separation should be under other than honorable conditions or a higher form. Examination of the individual will be made and written evaluation submitted, by a psychiatrist or other medical officer. A statement of the individual, if one is made, and the medical evaluation, together with detailed comments and recommendations of the commanding officer, shall be promptly submitted to the Department. In reviewing the papers thus submitted in the Department, disposition shall depend upon all attendant circumstances, as revealed by the submitted papers and available departmental records, special emphasis to be laid upon the apparent motivation and candor of the individual and upon the character of his previous military service as revealed by records.

(3) Where personnel admitting, professing, or exhibiting homosexual tendencies commit or have committed offenses, whether or not related to their purported homosexuality, for which, in the

332 Digitized by Google

opinion of the commanding officer and the convening authority, they should be brought to trial by court-martial, then the Department should be requested to delay administrative disposition pending the completion of the court-martial trial.

6. Rights of the Individual. In connection with the processing of persons suspected of an offense under the Uniform Code of Military Justice, attention is invited to article 31, UCMJ, to which strict compliance is directed.

7. Conclusion. The Navy Department has occasionally encountered misconceptions on the following points: (1) The role of the medical expert in regard to cases involving homosexual acts while in the naval service, as classified in paragraph 5 above; and (2) the degree of culpability of persons who, while in the naval service, have passively participated in homosexual acts. Explanations are therefore supplied as to these matters.

a. In the case of one who, while in the naval service, has been the active participant in a homosexual act, opinion of medical experts that the participant is not a "true homosexual" is immaterial as concerns following the procedure set forth in the preceding paragraph. In the case of one who, while in the service, has allegedly made an indecent proposal or has attempted to commit a homosexual act, expert medical opinion that he is not a "true homosexual" is of bearing where the words or actions constituting the alleged proposal or attempt are admitted, but the actor contends that he spoke or acted facetiously, with no real intent to engage in a homosexual act. Such an issue will normally be best left to resolution by a general court-martial. In the case of one who, while in the naval service, has engaged in a homosexual act as a passive participant, expert opinion that such passive participant is not a "true homosexual" is material only if a contention is made that the participation was not voluntary. In other than clear cases of forcible invasion, this issue is likewise one which can normally be best resolved by a general court-martial.

b. It is emphasized that no distinction is made in administrative handling of cases of alleged participation in homosexual acts while in the naval service, based upon whether the role of a person in any particular act(s) was passive or active. It is the view of the Navy Department that one who voluntarily assumes a passive role in such acts is no less a homosexual than the active participant. Commanding officers should impress this fact upon those under their command.

JOHN F. FLOBERG
Assistant Secretary of the Navy for Air

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28 November 1952

MEMORANDUM for ASSISTANT SECRETARY OF DEFENSE

Subj: Committee to Review Policy on Discharge of Homosexuals - Dissenting Report

Ref: (a) SecDef Memo of 28 Jul 1952
(b) Report of Committee to Review Policy on Discharge of Homosexuals dtd 24 Oct 1952

1. Reference (a) directed that an examination be made of the definition and disposition of Class III homosexuals contained in the current Department of Defense directive on the subject with a view to recommending changes if considered necessary. Reference (b) recommends that this precept be broadened to permit full examination of the entire problem of sexual deviation as encountered in the Armed Services with specific authority to propose modification and delineation of the medical, legal and administrative aspects.

2. Since the report, as presented, contains no mention of divergent opinion, it carries the implication that all Committee members were in agreement with the statements and recommendations made therein. On the contrary, the contents and tenor of the report as well as the recommendations do not wholly represent the feelings of the undersigned. It is desired therefore to submit herewith a differing opinion.

3. Examination of the Problem of Sexual Deviation. It is not felt that a review of the entire problem of sexual deviation and its relation to the Armed Services as recommended in reference (b) is either necessary or desirable at this time. The field of sexual deviation, as opposed to homosexuality, is so broad and complex that a detailed study would be excessively time consuming and expensive and any single directive which attempted to cover all phases of the subject would be too involved to be effective. In addition, it is not believed that problems of any magnitude have arisen which would warrant an investigation of this scope. Should the recommendation of reference (b) that the precept be broadened be considered as applying only to the homosexual aspects of sexual deviation, the undersigned are of the retained opinion that an examination of the entire problem also is unnecessary. This conclusion is reached (1) after consideration of the problems presented to the Committee, (2) in view of the general agreement that the vast majority of homosexual cases are now being processed satisfactorily under current directives and (3) since extensive reviews of the overall problem have been made in recent years. Substantiation of this conclusion is contained in succeeding paragraphs.

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Subj: [illegible] to Navies Policy on Discharge of Homosexuals [illegible]
Report

1. Comments on Problems Presented. The factors presented to the Comm... in support of the recommendations made in reference (b) are summarized in paragraphs 5 and 6 thereof. These problems appear to group themselves broadly into those of (1) a sociological, or (2) a medical nature and are presented in an emotional rather than factual manner and without apparent regard for the overall interests of the Military Establishment.

(a) The sociological problems (subparagraphs 5a, d and e of reference (b)) present objections to the so-called stigmatising of certain categories of persons as homosexuals when, in the opinion of some Committee members, such persons are not actually true and confirmed homosexuals. Specific reference has been made to the following categories of individuals: (1) Persons who commit one overt provable act in the Service but refuse to admit to any other acts or tendencies, (2) Individuals who openly and readily admit to homosexual tendencies but claim to have committed no acts. In regard to these two categories of persons, it is pointed out that the Services do not determine that such persons are in fact habitual homosexuals but rather that they are considered unfit for military service due to commission of such acts or possession of such tendencies and should be separated therefrom. By Department of Defense directive no material of a derogatory nature may be included on discharge certificates and hence no reference is made to the underlying reason for discharge. It is not felt therefore that these persons are stigmatized for their violation of the Uniform Code of Military Justice or for unfitness in any greater degree than other servicemen who are discharged as the result of misconduct or possession of undesirable traits. It is also pointed out that these individuals constitute potential security risks, since they are as equally open to blackmail as the habitual offender. Further, in reference to the first category mentioned directly above, it is not believed that the Services can in any way condone a violation of the Uniform Code of Military Justice, this country's moral codes or the Services' responsibilities to its other members and their parents by admitting tacitly or otherwise that a single overt homosexual act is a normal and usual occurrence and that the participants in such an act are fit morally to associate with other service personnel. Regarding the second category of persons referred to, since such individuals normally are either retained or receive a discharge under honorable conditions, the undersigned do not feel that they are either stigmatized as homosexuals or that an invasion of basic human rights is being perpetrated. In regard to the foregoing, it is emphasized that the present directive is sufficiently flexible to authorize disposition ranging up to and including retention in cases where justice and equity require such action under particular circumstances. A change in the present DOD directive would not alter the basic circumstances or conditions and could not eliminate the stigma such individuals bring on themselves.

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Committee Action Policy on Discharge of Homosexuals
Report

(b) In regard to the medical problems presented (subparagraph c of reference (b)), it is apparently the feeling of some members that the medical services are not permitted sufficient latitude in deciding the action to be taken in individual homosexual cases under the present directive, but rather are limited to report to the appropriate administrative authority any person who admits to the commission of a homosexual act or to exhibiting homosexual tendencies regardless of the manner in which the information is received. In this regard, it is felt that the report has over-emphasized the medical aspect of the homosexual problem as it pertains to current policy, and fails to acknowledge that responsibility for determining the disposition of Service personnel and for maintaining Service standards ultimately rests with the military command authorities. Clearly, medical opinion and support are necessary in order to implement any directive similar to the one under consideration. However, it is firmly believed that separation of military personnel from the Services for homosexual reasons is primarily an administrative function; the medical aspect should be subordinated thereto by restricting itself to the providing of assistance to the final authority in reaching such decisions. In this regard, it is considered that the individual's rights and privileges are well-preserved under the present directive through several safeguards including the final review of each case, individually, by the central board concerned. No additional and specific medical safeguard appears warranted. Further, it is believed that the present directive provides adequate authority for medical treatment of those individuals who, in the opinion of competent medical authority, are suffering from a curable underlying psychotic defect of which allegations of homosexual tendencies may be an external indication. It is believed that any extension of the present authority in this regard would not be in the best interests of the Services and could subject the military establishment to severe criticism.

(c) Reference (b) contains implications that the present directive should be modified to provide authority for the treatment of certain categories of homosexual cases. For reasons of security, internal morale, good public relations, etc. and other factors, it is strongly felt that the "curing" of any category of homosexually inclined personnel should not be attempted within the Services except where such inclination is purely an outward manifestation of a basic but curable defect. It is recommended that the Department of Defense directive continue to reflect this attitude.

(d) Reference (b) contains a statement that "approximately one-third of the population has at some time had a homosexual experience" and implies that should the various Services discharge every person who has had one

homosexual experiences, a serious crisis would develop in relation to our available manpower. The inference gained appears to be that an ill-defined group of persons, now considered unfit should be retained for manpower reasons. It is asserted that the foregoing statement has been extracted from the Kinsey report regarding male homosexuals. As is well known, the method of obtaining data and some of the conclusions in this report have been the subject of severe criticism by statisticians, medical personnel, and others. The undersigned do not feel that the one-third figure mentioned has any real application to the Armed Forces, and statistics of the various Services support this view. It is therefore believed that adequate numbers of fit personnel are available without resorting to the retention of persons now considered an unacceptable Service material. As no changes in the present Department of Defense directive can effect the incidence of homosexuality amongst Service personnel, nor alter the actual unfitness of such persons to serve in the Military Establishment, it is recommended that no change in the directive be made as a result of the implication obtained from the statement quoted above.

5. Opinion. In view of the foregoing, and unless further problems of a broader scope are presented, it is the opinion of the undersigned that (1) a majority of the problems presented appear to be soluble through modifications to the individual Service directives, and instruction in compliance therewith; (2) that the present directive has proven workable and satisfactory in the great majority of cases processed; (3) that adequate reasons for a major study of the entire problem of sexual deviation have not been presented; (4) that adequate reasons for a major revision to the present Secretary of Defense policy regarding disposition of homosexuals also have not been presented.

6. Recommendations. It is recommended that no full-scale study of the problem of sexual deviation and its relation to the Armed Services be undertaken nor that any major revision to the Department of Defense directive in the premises be made. However, in the event it is determined that it appears desirable to make any substantial modification to the current directive that such modification be directed toward restating the present policy in broad, unrestricted terms rather than in attempting to solve individual Service problems by means of a detailed and delimiting directive.

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Committee to Review Policy on Discharge of Homosexuals -
Report

/s/ Grover L. Wilson
Grover L. Wilson
Col., USAF

/s/ T. J. Halliday
T. J. Halliday

Concur with paras. 5 and 6 but not with all of the comments in para. 4.

/s/ Jack Payne
Jack Payne
Lt. Col., USAF

/s/ St. J.R. Marshall
St. J.R. Marshall
Col., USMC

Concur except for para. 4.

/s/ E. M. Logan,
Lt., USMR for
F. L. Forsbee
Cdr., USN

/s/ L. H. Kastora
L. H. Kastora
Lt. Col., USA

/s/ G. T. Pressey
G. T. Pressey
Capt., USN

/s/ H. E. Seely
H. E. Seely
Capt., USN

338

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24 October 1952

MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE

SUBJECT: Report of Committee to Review Policy on Discharge of Homosexuals

1. Reference is made to your memorandum dated 28 July 1952, subject: "Committee to Review Policy on Discharge of Homosexuals."

2. A committee has been formed of the officers listed on the attached roster. The general committee convened on 9 September 1952 and 14 October 1952, and several conferences of subcommittees were held on unspecified dates. The Personnel Policy Board Memorandum of 11 October 1949 formed the starting point for the discussion of the conferees.

3. The conferees have been in general agreement on the following points:

a. There is no difference of opinion regarding the identification, definition and disposition of those individuals described in Class I of the 1949 Memorandum.

b. All services are in concurrence as to the disposition of those who are repeated, habitual, or customary participants in acts of sexual perversion, who are in flagrante delicto, or whose acts are substantiated by evidence or witnesses.

4. The individuals concerned in 3 a and b above present legal and administrative problems, as offenders against law, regulations, and moral codes.

5. There was a preponderance of opinion that the agenda of this committee should not be restricted to the considerations advanced under Class III of the 1949 Memorandum. In discussion the following matters were emphasized as relevant:

a. At present, there are included in Class II of the 1949 Memorandum individuals who cannot properly be stigmatized as "homosexuals." This includes those who have been involved in isolated episodes of deviation and whose basic problem is not homosexuality but psychiatric disease or psychosexual immaturity. Many of the individuals who manifest psychosexual immaturity may be considered as normal in all other respects. It is pointed out that during the process of achieving an adult heterosexual adjustment approximately one third of the population has at some time had homosexual experience. The importance of this problem is far reaching considering our limited national manpower.

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b. Often Class II individuals are exposed solely because they have given self-incriminating evidence in confidence to a medical h[illegible] in hope of gaining medical counsel. As a result, they become subject further non-medical investigation because the doctor-patient relationship is not protected by the status of privileged communication in the military services. In some services, medical officers have been led to believe that they are liable to punitive action should they fail to report to investigating authorities information obtained from the doctor-patient relationship. This situation besides threatening the proper functioning of the medical program by lowering confidence in the integrity of its operation, entangles medical personnel in investigations which often simulate "witch hunts" under the guise of medical practice.

c. Many of the individuals placed in Class III by the 1949 Memorandum present medical rather than administrative problems. These are patients who require treatment and to whom the definition of "homosexuals" does not apply. To these members inquisition and investigation is medically contraindicated, as it may serve as an unstabilizing aggravation to an already weak or ill-adapted personality. Free of administrative or legal interference, medical and psychiatric treatment will restore many of these to effective military service. The danger in this medical problem, as formerly in the venereal disease problem, lies in the driving of the patient away from the doctor by the threat of punitive action. This results in the "infection" of the population by the untreated, but curable, individual.

d. The present directive not only results in some individuals being arbitrarily stigmatized as "homosexuals" when in fact they are not but jeopardizes their future status and welfare in the civilian community. This, in effect, constitutes an invasion of basic human rights. The services should be concerned not merely with removing undesirable persons from the service but also with the effect that the method of removal will have upon their subsequent rehabilitation as useful citizens in the civilian community.

e. When separation of "Class II and III" individuals from the Armed Services is indicated, in many cases it should be accomplished under existing regulations not solely concerned with homosexuality.

6. It is recommended that this committee be authorized to open up the entire problem of sexual deviation and its relation to the Armed Services. It is further recommended that the committee be authorized to propose modification and delineation in:

a. The medical aspects of the problem, and
b. The legal and administrative aspects.

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Memo for the Secretary of Defense (cont'd)

7. It is the opinion of this committee that six months will be necessary for a satisfactory study of this problem. Every effort should be made to render a report prior to that date.

John A. Schneider

1 Incl
Roster

JOHN A. SCHNEIDER, Colonel, USAF
Chairman

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COMMITTEE TO REVIEW POLICY ON DISCHARGE OF HOMOSEXUALS

Department of the Air Force Members

Colonel John A. Schindler, USAF (MC) - Chairman
Colonel Earle M. Christensen, USAF (MC)
Colonel Cropper L. Tilson, USAF
Lt. Colonel Carlos C. Alden, Jr., USAF (MC)
Lt. Colonel William R. Stetson, Jr., USAF

Department of the Navy Members

Captain R. A. Ball (MC), USN
Captain C. H. Raines (MC), USN
Lieut. Commander R. S. Wiseman (MSC), USN
Captain C. K. Prouty, USN
Commander Francis L. Forshee, USN
Mr. T. J. Sullivan
Commander Sr., Julian R. Marshall, USNR

Armed Forces Medical Policy Council Member

Colonel J. C. Kilgore, USAF

Department of the Army Members

Brig. Gen. Hardin T. Chambers, USA (Ret.)
Lt. Colonel Lee E. Eggers, USA

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DEPARTMENT OF THE NAVY
Office of the Under Secretary
Washington 25, D.C.

16 Aug 1952

MEMORANDUM

From: Under Secretary of the Navy
To: Chief of the Bureau of Medicine and Surgery
The Judge Advocate General
The Commandant, U. S. Marine Corps

Subj: Committee to Review Policy on Discharge of Homosexuals

Encl: (1) Cy of memo of July 28, 1952 from ASTSECDEF

1. The Assistant Secretary of Defense has requested the Secretaries of the three Services, by enclosure (1), to appoint members of a committee to reconsider the policy in regard to the discharge of homosexuals from the Armed Forces. It will be noted from the terms of reference with enclosure (1) that the scope of the proposed policy review will be limited to consideration of Class III cases.

2. The Chief of Naval Personnel has nominated Captain H. W. Sealy, USN, of the Performance Branch and Captain G. W. Pressey, USN, of the Training Division; and it has been suggested that Mr. T. J. Mullikin be designated as the representative of the Office of Naval Intelligence.

3. It is requested that the addressees advise the Under Secretary of the names of the persons nominated to serve with those of the other Services on the Department of Defense committee if representation is desired.

Francis P. Whitehair
Under Secretary of the Navy

Copy to:
Chief of Naval Personnel
CNO (Director, Naval Intelligence)

343

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ASSISTANT SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

July 28, 1950

MEMORANDUM FOR THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE
THE CHAIRMAN, ARMED FORCES MEDICAL POLICY COUNCIL

SUBJECT: Committee to Review Policy on Discharge of Homosexuals

1. Reference is made to Department of Defense memorandum subject, Discharge of Homosexuals from the Armed Services (M-46) dated 11 October 1949.

2. Prior to the adoption of policy enunciated in above referenced memorandum a subcommittee made up of representatives from all the Services with appropriate backgrounds of administration, medicine, psychiatry and the woman's Services made a comprehensive study of this matter. The objectives of this study were to develop a more humanistic and realistic approach to the administrative handling of the various cases of homosexuals, both male and female; and to standardize policies and procedures of the Services on this subject.

3. A salient recommendation of the subcommittee was that of centralized review and disposition of each case in each Service concerned. Such procedure was then in effect within the Navy Department. They also recommended that each case of homosexuality be carefully, thoroughly and individually studied so that final treatment, action or disposition would be in accordance with the latest accepted medical, sociological and legal concepts.

4. It has come to the attention of this office that some difficulty has been encountered in implementing the processing and classification of Class III cases. It appears that with the expansion of our Armed Forces the maintenance of centralized review at departmental level to determine final disposition has resulted in some instances in a certain degree of inflexibility of assignment and reassignment because of the attendant delay in processing papers from the field to the departments concerned. In delays of this type there is also the morale aspect of the individual's organization as well as the individual to be considered. Concern has also been registered concerning the interpretation of the definition of this class of personnel from a psychiatric viewpoint.

5. In view of the above I believe it is desirable to review present Department of Defense policy as it pertains to classification and processing of Class III personnel. The Armed Forces Medical Policy Council concurs in this view and further states that the Neuro-Psychiatrics Divisions of the Surgeon General offices of the Services would welcome such review.

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344

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6. Accordingly, it is requested that a committee composed of representatives from the Armed Forces Medical Policy Council, the Services' Neuro-Psychiatric Divisions; and such other representatives as may be deemed necessary, under the chairmanship of the Depart... the Air Force review this subject and prepare appropriate recomme...

7. Enclosure (1) is terms of reference to be considered for ... resolution or recommendations. Inasmuch as only one facet of the over-all policy regarding discharge of homosexuals will be considered it is requested that completed report and recommendations be submitted within two months, and earlier if possible. In any event, a report of estimated time required to complete the review is desired.

8. Please advise this office and Department of the Air Force the names and telephone numbers of representatives. Colonel J. O. Kilgore, Military Personnel Policy Division, Extension 77197, will act as liaison between the committee and this office.

Anna M. Rosenberg

Enclosure

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345

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TERMS OF REFERENCE

Examine the problems experienced in implementing the policies of the Armed Services in connection with identification and disposition of Class III homosexuals for both sexes.

Study the advantages and disadvantages of centralization of the final decisions in cases of this nature.

Consider the present wording of the definition of Class III homosexuals to insure that the best interests of the Services as well as the individual are achieved.

Recommend a revised uniform policy, if deemed appropriate, in the classification and processing of cases considered as Class III homosexuals.

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16 Dec 1949

MEMORANDUM FOR THE CHAIRMAN PERSONNEL POLICY BOARD:

Subj: [illegible] of Homosexuals from the Armed Services.

Ref: (a) SecDef Memo dtd 11 October 1949
(b) SecNav ltr dtd 14 July 1949

1. Reference (a) enunciated the approved policy of the Personnel Policy Board with respect to treatment and discharge of homosexuals from the Armed Services and requested that the policy be placed in effect as soon as possible. Present policies, procedures and practices have been reviewed and the report requested by the Chairman, Personnel Policy Board is submitted herein.

2. The principal features of the Personnel Policy Board's approved policy with pertinent comments follows:

(a) "Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces be made mandatory."

Comments: This policy constitutes no change in present practice and is stated in reference (b).

(b) "Each branch of the Armed Forces should include information on homosexuality in its educational program."

Comment: Information on homosexuality is included in the recruit training program and in officer indoctrination courses. Information is also included in orientation lectures given at all Navy Service Schools.

(c) "In cases involving female personnel, a female officer should be a member of all boards."

Comment: This is a departure from present practice in that a female officer does not actually sit as a member of the board in cases involving female personnel. However, before directing final action on any woman member of the Naval Service, each case has been referred to the Assistant Chief of Naval Personnel for Women. In conformity with reference (a), a female officer will serve as a member on boards considering cases involving female personnel.

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(d) "A central review board for each service at departmental level would insure uniform action on cases of homosexuality throughout each Department. Conferences between members of these boards would tend to promote uniform action throughout the Armed Services. However, it is recognized that the different Departments have administrative problems more or less peculiar to each service, and for this reason the administrative details of implementing the policy outlined below for the disposition of homosexual personnel may be at the option of the various Departments concerned."

Comment: Central review boards at the departmental level have been established in the Navy under the Chief of the Bureau of Naval Personnel. Conferences will be held from time to time between members of the Navy boards and their coordinates in other branches of the Armed Services.

(e) "Disposition boards shall be guided by policy outlined in reference (a)."

Comment: The only major change prescribed by reference (a) to the current Navy Department policy, reference (b), is the establishment of a Class III category of personnel. This class includes members of the service who exhibit or admit homosexual tendencies or acts and wherein there are no specific provable acts or offenses, or court martial jurisdiction does not exist. Reference (b) provides for the processing of persons in this category but does not prescribe a specific class for them. A new directive, which will cancel reference (b), has been prepared and includes the changes in policy outlined in reference (a) and administrative procedures necessary for implementation.

DAN A. KIMBALL
Under Secretary of the Navy

Prepared by
Cdr. R. R. Humes
Ext. 71411
Room No. 2054
BuPers

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10 December 1949

To: All Ships and Stations.

Subj: Procedure for the disposition of cases involving Homosexuality involving Navy personnel.

Refs: (a) [illegible] Bulletin of July 1949, Pages 49-514 [illegible]

(b) Chairman of Personnel Policy Board memorandum to the Secretaries of the Army, Navy, and Air Force dated 11 October 1949 establishing policy re discharge of Homosexuals from the Armed Services. (Copies not available for distribution and not needed by addressees).

1. Reference (a) is hereby cancelled.

2. Reference (b) established a uniform policy to be followed by the Armed Services with respect to the treatment and discharge of homosexuals from the Armed Services.

3. Consonant with reference (b), the Navy Department's policy and the administrative procedure for disposition of personnel in cases involving homosexual tendencies or acts are outlined herein.

4. Homosexuality within the naval service is primarily a military problem. However, insofar as the individual is concerned, homosexuality is a medical problem because it is a manifestation of [illegible] the normal, mature, adult sexual development. While the psychological mechanism of homosexuality is primarily a psychiatric problem, on the other hand, the commission of unacceptable social acts falls definitely into the category of the legal and disciplinary spheres. Barring psychosis, individuals should be held socially responsible and accountable for their acts. Those who have committed homosexual offenses should be held accountable for their failure of control. Likewise, no individual should be permitted to transgress the rights of others.

All socially unacceptable sexual acts should be punished in direct proportion to the seriousness of the offense itself, ever bearing in mind the need of the dual purpose of military justice, (1) as a deterrent, to maintain proper order and morals, and (2) the corrective influence on the individual himself. Each case needs careful, thorough, and individual study so that final treatment, action, or disposition will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls.

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Subj: Procedure [illegible] Disposition [illegible] Involving Naval Personnel.

5. Known homosexual individuals are military liabilities and must be eliminated from the service. Commanding officers receiving information indicating that a person in the naval service possesses homosexual tendencies or has engaged in an act of homosexuality shall inquire thoroughly and comprehensively into the matter and ascertain all the facts and circumstances of the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

It is essential that all the facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained. Except where the individuals are brought to trial by General Court Martial, a complete report of the recorded facts shall be made to the Department by the most expeditious means. In cases wherein the evidence thus far developed, considered in the light of all surrounding circumstances, is productive of reasonable doubt as to whether a homosexual tendency actually exists or a homosexual act, attempt, or proposal has in fact been committed or made, the commanding officer may hold the matter in abeyance for a limited time pending his first opportunity to seek assistance or advice from a representative of the Office of Naval Intelligence experienced in investigation of such cases, or from experienced qualified medical experts as regards characteristics which may support or negate the existence of tendencies claimed or suspected. In such cases, report to the Department may be delayed pending receipt of confirmatory advice.

6. Personnel coming within the purview of this directive fall into several categories which may or may not overlap and which will be more or less complicated by facts and circumstances peculiar to the individual case. These cases, however, are generally classified and the normal disposition for each class will be as follows:

A. Class I is defined as those cases accompanied by assault or coercion as characterized by an act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation, thereby constituting invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

Disposition: — Trial by General Court Martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with ~~Sec. 34(b), Naval Courts and Boards~~.

B. Class II is defined as those cases wherein personnel, while in the naval service, have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of Class I above.

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Subject: Procedures for [illegible] Involving Homosexuals

Discussion: —

(1) Disposition will be accomplished by administrative separation under honorable conditions when such a member qualifies for such separation under the terms of this policy. In which case he will be recommended for trial by court martial only as follows:

(2) Sample charges and specifications for trial by General Court Martial shall be drawn and the accused if in the continental limits, there he shall be offered the following alternative:

(a) Which shall be typed on the accused's official letterhead and shall read as follows: "I hereby submit my resignation for the good of the service and understand that by General Court Martial. I understand that my separation from the naval service effected by acceptance of this resignation will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing."

If an accused of four refuses to submit his resignation as worded he shall be recommended for trial by General Court Martial. [illegible] communications for trial shall be prepared and submitted to the appropriate convening authority in accordance with [illegible] Naval Courts and Boards.

(b) Enlisted persons shall be informed that a proper statement to be made as follows, shall properly receive favorable action: "I hereby request an honorable discharge for the good of the service and to escape trial by General Court Martial. I understand that my separation from the naval service effected by honorable discharge will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing."

If an accused enlisted person refuses to sign a statement so worded, he shall be recommended for trial by General Court Martial. Recommendations for trial shall be prepared and submitted to the appropriate convening authority in accordance with [illegible] Naval Courts and Boards.

(3) While the foregoing is the normal procedure that should be followed in these cases, nothing in this policy will preclude the bringing of any homosexual to trial before a court martial if a superior authority considers the circumstances to render such action essential in the

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interest of the naval service or the public. Likewise, where personnel have other substantial charges against them for which, in the opinion of the commanding officer and the convening authority, they should be brought to trial by General Court-martial, such trial should be ordered and appropriate charges preferred, including charges setting forth the alleged homosexual acts or offenses.

(4) The commanding officer shall submit to the Department a complete report of each Class II offender who is afforded, and who elects, the alternative of resignation or undesirable discharge. In all cases the report should include: A full and complete statement from the officer or enlisted person concerned, or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of the sample general court-martial charge and specification(s); resignation of the officer or agreement by the enlisted person to accept an undesirable discharge as warned in paragraph 6(3)(2) above; and the commanding officer's detailed comments and recommendations. The commanding officer's report will include a psychiatric or medical evaluation of the person concerned.

C. Class III is defined as those rare cases wherein personnel only exhibit, profess, or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

Disposition: --

(1) All such cases shall be carefully evaluated with a view toward prompt administrative separation and the type of discharge to be given by the Department will take into consideration all attendant facts and circumstances.

(2) In these cases it is extremely important that every attempt be made to distinguish between personnel having true homosexual tendencies and those who are professing such tendencies solely for the purpose of avoiding military service. The person admitting homosexual tendencies and/or pre-service acts shall be advised to submit a written statement, setting forth in fullest detail his history with reference to his condition. Those admitting tendencies as well as those who do not will be instructed that they are privileged to submit such written statement as they may see fit, and, if they do not desire to submit a statement, to set forth that fact in writing. Likewise, such a person may be informed that he is privileged to submit his resignation or request for discharge under other than honorable conditions for the good of the service, and upon receipt of such resignation or discharge request, all facts will be considered and decision made as to whether the separation should be under other than honorable conditions or a higher form. Examination of the individual shall be made and written evaluation submitted, by a psychiatrist

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or other medical officer. A statement of the individual, if one is made, and the medical evaluation, together with detailed comments and recommendations of the commanding officer, shall be promptly submitted to the Department. In reaching a decision upon cases thus submitted to the Department, a decision shall depend upon all attendant circumstances, as revealed by the submitted papers and available Departmental records, special emphasis to be laid upon the apparent motivation and gravity of the individual and upon the character of his prior military service as revealed by records.

(3) Where personnel admitting, professing, or exhibiting homosexual tendencies commit or have committed offenses, whether or not related to their purported homosexuality, for which, in the opinion of the commanding officer and the convening authority, they should be brought to trial by court-martial, then the Department should be requested to delay administrative disposition pending the completion of the court-martial trial.

7. The Navy Department has occasionally encountered misconceptions on the following points: (1) The role of the medical expert in cases involving homosexual acts while in the naval service, as classified in paragraph 2 above; and (2) the degree of culpability of persons who, while in the naval service, have passively participated in homosexual acts. Explanations are therefore supplied as to these matters.

(a) In the case of one who, while in the naval service, has been the active participant in a homosexual act, opinion of medical experts that the participant is not a "true homosexual" is immaterial as concerns following the procedure set forth in the preceding paragraph. In the case of one who, while in the service, has allegedly made an indecent proposal or has attempted to commit a homosexual act, expert medical opinion that he is not a "true homosexual" is of benefit where the words or actions constituting the alleged proposal or attempt are admitted, but the actor contends that he spoke or acted facetiously, with no real intent to engage in a homosexual act. Such an issue will normally be best left to resolution by a General Court-martial. In the case of one who, while in the naval service, has engaged in a homosexual act as a passive participant, expert opinion that such passive participant is not a "true homosexual" is material only if a contention is made that the participation was not voluntary. In other than clear cases of forcible invasion, this issue is likewise one which can normally be best resolved by a General Court-martial.

(b) It is emphasized that no distinction is made in administrative handling of cases of alleged participation in homosexual acts while in the naval

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service, based upon whether the role of a person in any particular act(s) was predominately active. It is the policy of the Navy Department that one who predominately assumes a passive role in such acts is less a homosexual than the active participant. Commanding officers should impress this fact upon those under their command.

8. There must be established that all persons involved are completely investigated and reported and that appropriate information is expeditiously forwarded to other commands as necessary to complete all cases. All information concerning any other homosexuals involved, either civilian or service personnel, will be forwarded to the Department for information and further evaluation. In order to guarantee the availability of essential witnesses in a subsequent court-martial proceeding, where such are necessary, no personnel shall be separated from the service without prior reference to the Department until the investigation and disposition of other personnel involved shall have been concluded. No person held solely as a witness shall be confined, unless it is deemed reasonably necessary for his own protection.

9. Each case of homosexuality reported to the Department in accordance with the provisions of this directive shall be referred to an appropriate board of officers in the Department who will give full consideration to all the facts and circumstances in the case and will make recommendations as to the disposition to be directed. In all cases involving female personnel, a female officer shall be a member of all such boards.

10. This procedure shall be followed without exception in all cases of homosexuality arising among personnel, male and female, of the Navy and Marine Corps, Naval Reserve and Marine Corps Reserve while on active duty. The word Department is used herein in connection with the submission of reports and shall be construed to mean either the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate.

/s/ FRANCIS P. MATTHEWS

354 Digitized by Google

Oct 11 1949

MEMORANDUM FOR THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Discharge of Homosexuals from the Armed Services.

The Personnel Policy Board has approved the following policy with respect to treatment and discharge of homosexuals from the Armed Services:

1. a. Homosexuals personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces be made mandatory.

b. Each branch of the Armed Forces should include information on homosexuality in its educational program.

c. In cases involving female personnel, a female officer should be a member of all boards.

d. A central review board for each service at Departmental level would insure uniform action on cases of homosexuality throughout each Department. Conferences between members of these boards would tend to promote uniform action throughout the Armed Services. However, it is recognized that the different Departments have administrative problems more or less peculiar to each Service, and for this reason the administrative details of implementing the policy outlined below for the disposition of homosexual personnel may be at the option of the various Departments concerned.

e. Disposition boards shall be guided by policy outlined as follows:

(1) Homosexual personnel coming within the purview of this policy will fall into several categories which may or may not overlap, and will be more or less complicated by the facts and circumstances peculiar to the individual case. The cases, however, are generally classified and normal disposition prescribed for each class as follows:

(a) Class I is defined as those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud or actual intimidation, thereby constituting the invasion of the rights of another, or any homosexual act with a child under the age of consent whether the child cooperates or not.

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(1) Disposition: Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with existing instructions.

(b) CLASS II is defined as those cases wherein persons have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of CLASS I above.

(1) Disposition: Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the Service under such conditions in which case he will be recommended for trial by court-martial. However, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if superior authority considers the circumstances to render such action essential in the interest of the military establishment.

(2) It is emphasized that no distinction is made in the administrative handling of cases of alleged participation in homosexual acts while a member of the United States Armed Forces, based upon whether or not the role of a person in any particular action was active or passive.

(c) CLASS III is defined as those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Disposition: Administrative separation will be accomplished, and type of discharge to be given will take into consideration all attendant facts and circumstances.

(2) All persons who confess homosexual tendencies shall not necessarily be discharged merely on the basis of confession of homosexuality. It is essential to distinguish between those who have uncontrollable perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Evidence of an existing psychological or other maladjustment resulting from such tendencies, or other circumstances, which render the individual inadaptable for military service, will be carefully evaluated by each Board concerned in making a decision.

(2) The character of separation normally to be effected for all classes of homosexuality arising among service personnel shall be similar and without distinction as to sex (male or female), or status (officer or enlisted), in all components of the Armed Forces.

It is requested that this policy be placed in effect as soon as practicable. Present policies, procedures and practices should be reviewed in the light of this policy, and a report submitted to the Chairman, Personnel Policy Board, not later than 7 December 1949.

/s/ Hubert E. Howard
Hubert E. Howard
Chairman

cc: Dir., P&A, Army
ChiefPers, Navy
Dir., Mil. Pers., Air
Comdt., USMC

356

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24 August 1947

[redacted] PART I

A STUDY TO REVISE REGULATIONS FOR THE HANDLING OF HOMOSEXUALS IN THE ARMED SERVICES
PROJECT NO. M-46

1. Introduction

a. The problem of homosexual behavior in the Armed Services has both legal and medical aspects. From the medical aspect it is a personality disorder relating to a stage of development occurring in every individual with either (a) failure to develop beyond this state or, (b) subsequent regression to this stage. Many individuals by their very admission to the Armed Forces, because of its chiefly male component, do experience an awareness of and sometimes anxiety over their interest in other men. In such cases the individual needs medical help and guidance, and in many instances can be helped to readjust and be an effective soldier. However, the Armed Forces currently lack both facilities and personnel for prolonged and intensive psychiatric treatment of sexual perversion. Moreover, prolonged treatment goes beyond the mission of the Medical Departments of the Armed Forces.

b. From the military aspect, homosexuality is considered to be a primarily administrative problem. In those instances of a chronic or overt adjustment at the homosexual level, discharge is indicated through administrative channels because of his obnoxious and troublesome behavior and not through medical channels because of his medical problem.

c. Homosexual offenses are included in the criminal denunciation of Article of War 93 and AGN-6. However, it is a concern of the Military Establishment in any given case whether the maintenance of discipline and the interest of the Military Establishment are best served by treatment, trial by court-martial, or by prompt elimination of the offender from the Service.

2. Extent of the Problem.

a. Navy. Navy records indicate steadily diminishing trials by court-martial with reliance on administrative separation. (Tab A)

b. Army and Air Force.

(1) Official data available to the Committee indicates a relatively insignificant problem with regard to homosexuality. The Committee believes the data does not accurately reflect the incidence of homosexuality as such by reason of statistical methods by use. (Tab B)

(2) Lunninger indicates over 1800 men in the Army were diagnosed as homosexual in 1943. (Tab C, Page 4)

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c. General

(1) Kinsey gives rather startling figures on the incidence of homosexual behavior in the male population. For example: "37% of the total male population has had at least some overt homosexual ... between adolescence and old age." On the other hand "4% of white males are exclusively homosexual throughout their lives, after the onset of adolescence." (Tab D)

(2) Kinsey further states that 25% of the male population has more than incidental homosexual experience or reactions for at least three years between the ages of 16 and 55, and

(3) That nearly half (46% of the population engages in both heterosexual and homosexual activities, or reacts to persons of both sexes in the course of their adult lives.

(4) The attention of the Committee was directed to a study of homosexuals inducted into the Service. Of 183 known or latent homosexuals 51 were rejected at induction but only 29 for neuropsychiatric reasons. Of the remainder, 14 were discharged from the Service, 118 served from 1 to 5 years, and 58% were officers in the Army, Air Force and Navy. Their records were adequate and in some cases more than adequate. (Menninger Tab C, and Report on File, SGO: Some Observations on Homosexuality in Military Service, Fry, C.C., and Rostow, E.C.)

(5) The attention of the Committee was also directed to the danger of subversive activities by homosexuals. (Tab Dx)

(6) Army court-martial table of maximum punishment authorizes 5 years and dishonorable discharge for sodomy. Navy court-martial table authorizes 12 years and dismissal for officers, 10 years and dishonorable discharge for enlisted men.

3. Army Policy.

a. Reference is made to prior Army policies as outlined by Menninger (Tab C). Army policy has varied from treatment where indicated and reassignment (WD Cir. 385, 1945 - Tab E), or honorable discharge where no offense has been committed (WD Cir. 85, 1946 - Tab F) to slightly less liberal discharges (Basic War Department Policy, AR 615-368, 14 May 1947 - Tab G, and WD Cir. 179, 10 July 1947 - Tab H) to current directives, AR 615-368, 27 Oct. 48 (Tab I) and AR 605-200, 19 May 1949 - Tab J). (AR 605-275, Tab K).

b. Navy policy (applies generally to Marine Corps and Coast Guard).

(1) Reference is made to "Procedure for Disposition of Homosexuals among personnel of the U.S. Naval Service (Tab L), and C-10312, Discharge of Enlisted Personnel for Reason of Unfitness (Tab M), and current directive (Tab Mx)

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4. Air Force Policy.

a. Reference is made to recent directive (Tab N) replacing AD Cir. 179 (Tab H) embodying the provisions of that circular. Policy for enlisted personnel same as AR 615-368 (Tab I)

5. Frame of reference: Examine and identify the differences in the policies and practices of the Armed Services and Coast Guard in the handling of homosexuals for both sexes.

a. The Navy insures uniformity of procedure by using a central final authority. The Army and Air Force decentralize to commanders exercising general court-martial jurisdiction with resulting considerable variation in procedure (Tab Ix).

b. The Services unanimously agree that homosexual acts committed by force or with a minor should be tried by court-martial, and that the true, confirmed or habitual homosexual be separated as under other than honorable conditions or as undesirable. In practice, the Air Force, the Navy, the Marine Corps and Coast Guard apparently consider any act or attempt at homosexual offense as a cause for mandatory discharge or trial by court-martial; the Army apparently employs a more fluxible policy (Tab Ix).

c. Some variation in practice exists for the individual with homosexual tendencies only. Separations normally are effected as follows:

	Army	Air Force	Navy
Officer	General Discharge	Uses only a single type of discharge: under honorable conditions.	Under other than honorable conditions
Enlisted	All services normally give an undesirable discharge.		

6. Frame of reference: Study the recent Naval plan for handling homosexuals and consider recommendations of the Service psychiatrists in bringing the regulations and administrative procedures for the disposition of these individuals and cases up-to-date.

a. The recent Naval plan for handling homosexuals has been carefully reviewed by the Committee. This plan (Tab C) has served as the basis for the policy recommended by the Committee. Navy psychiatrists participated in the preparation of the plan.

7. Frame of reference: Recommend a unified policy for the Armed Services in the handling of homosexuals, with particular emphasis on the centralization of the final decisions in cases of this nature.

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Recommendations:

a. Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces is mandatory.

b. Each branch of the Armed Forces should include information on homosexuality in its educational program. The subject of homosexuality remains in entirely too much of a "taboo" status insofar as concerns intelligent discussion and explanation. The analogy to the manner in which the subject of venereal disease was treated up until quite recently is most striking.

c. Each case of homosexuality needs careful, thorough and individual study so that final treatment, action or disposition will be in accordance with the latest accepted medical, sociological and legal concepts.

d. In cases involving female personnel, a female officer should be a member of all boards.

e. A central review board for each Service at Departmental level would insure uniform action on cases of homosexuality throughout each Department. Conferences between members of these boards would tend to promote uniform action throughout the Armed Services. However, it is recognized that the different Departments have administrative problems more or less peculiar to each Service and for this reason the administrative details of implementing the policy outlined below for the disposition of homosexual personnel may be at the option of the various Departments concerned.

f. Disposition boards shall be guided by policy outlined as follows:

(1) Homosexual personnel coming within the purview of this policy will fall into several categories which may or may not overlap, and will be more or less complicated by the facts and circumstances peculiar to the individual case. The cases, however, are generally classified and normal disposition presented for each class as follows:

(a) CLASS I is defined as those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud or actual intimidation, thereby constituting the invasion of the rights of another, or any homosexual action with a child under the age of consent whether the child cooperates or not.

(1) Disposition: Trial by general court-martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with existing instructions.

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(b) CLASS II is defined as those cases wherein personnel have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which not fall in the category of CLASS I above.

(1) Disposition: Disposition will be accomplished by administrative separation under conditions other than honorable, unless the individual resists separation from the Service under such conditions in which case he will be recommended for trial by court-martial. However, nothing in this policy will preclude the bringing of any homosexual to trial before a court-martial if superior authority considers the circumstances to render such action essential in the interest of the military establishment.

(2) It is emphasized that no distinction is made in the administrative handling of cases of alleged participation in homosexual acts while a member of the United States Armed Forces, based upon whether or not the role of a person in any particular action was active or passive.

(c) CLASS III is defined as those rare cases wherein personnel only exhibit, profess or admit homosexual tendencies and wherein there are no specific provable acts or offenses, or court-martial jurisdiction does not exist.

(1) Disposition: Administrative separation will be accomplished, and type of discharge to be given will take into consideration all attendant facts and circumstances.

(2) All persons who confess homosexual tendencies shall not necessarily be discharged merely on the basis of confession of homosexuality. It is essential to distinguish between those who have uncontrollable perverse tendencies in fact and those who claim such for the purpose of avoiding military service. Evidence of an existing psychological or other maladjustment resulting from such tendencies, or other circumstances, which render the individual inadaptable for military service, will be carefully evaluated by each Board concerned in making a decision.

(2) The character of separation normally to be effected for all classes of homosexuality arising among service personnel shall be similar and without distinction as to sex (male or female), or status (officer or enlisted), in all components of the Armed Forces.

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ARMY

/s/
Colonel John K. Caldwell, Jr.,
Chairman

/s/
Lt. Col. R. C. MacKcachie

/s/
Lt. Col. Mary L. Milligan

NAVY

/s/
Capt. H. L. Neff

/s/
Lt. Commander H. ... elkup

MARINE CORPS

/s/
Major Raymond G. Coyne

AIR FORCE

/s/
Colonel George Green

/s/
Major J. H. Holliday

Classification cancelled
or changed to
UNCLASSIFIED
by authority of Chief of
Naval Personnel on
FEB 29 1952
(Date)
C. Dolla
Command
(Signature) (Rank)

[redacted]

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362

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14 July 1949.

From: The Secretary of the Navy.
To: All Ships and Stations.

Subj: Homosexuality - Procedure for the disposition of cases involving naval personnel.

Refs: (a) SecNav Conf ltr P13-7-83443 of 1 Jan 43 (043-15 Conf Bul 1945, Page 1).
(b) BuPers Conf ltr Pers-651-cdr/P13-7 of 28 Jan 44 (C44-12 Conf Bul 1945, Page 81).
(c) BuPers ltr Pers-651-AF/P13-7 of 24 Jan 45 (C45-8 Conf Bul 1945, Page 82).

1. References (a), (b) and (c) are cancelled.

2. The Navy Department's policy and the administrative procedure for disposition of personnel in cases involving homosexual tendencies or acts is outlined herein.

3. Homosexuality within the naval service is primarily a military problem. However, in so far as the individual is concerned homosexuality is a medical problem because it is a condition which must be considered at variance from the normal, mature, adult sexual development. While the psychological mechanism of homosexuality is primarily a psychiatric problem, on the other hand the commission of unacceptable social acts falls definitely into the category of the legal and disciplinary spheres. Barring psychosis, individuals should be held socially responsible and accountable for their acts. Those who have committed homosexual offenses should be held accountable for their failure of control. Likewise, no individual should be permitted to transgress the rights of others.

All socially unacceptable sexual acts should be punished in direct proportion to the seriousness of the offense itself, ever bearing in mind the need of the dual purpose of military justice. (1) as a deterrent, to maintain proper order and morale, and (2) the corrective influence on the individual himself.

Each case needs careful, thorough, and individual study so that final treatment, action or disposition, will be in accordance with the latest accepted medical, sociological, and legal ideas, according to the particular category into which it falls.

4. Known homosexual individuals are military liabilities and must be eliminated from the service. Commanding officers receiving information indicating that a person in the naval service possesses homosexual tendencies or has engaged in an act of homosexuality, shall inquire thoroughly and comprehensively into the matter and ascertain all the facts and circumstances of the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

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Subj: Homosexuality - Procedure for the disposition of cases involving naval personnel.

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It is essential that all the facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained. In certain cases where the commanding officer is unable to ascertain the facts it may be necessary to order a Board of Investigation. Except where the individuals are brought to trial by general court martial, a complete report of the recorded facts shall be made direct to the Department by the most expeditious means.

5. Personnel coming within the purview of this directive will fall into several categories which may or may not overlap and which will be more or less complicated by facts and circumstances peculiar to the individual case.

It is necessary first to distinguish the overt homosexual from the person who only professes or admits homosexual tendencies, and against whom there are no specific provable actions or offenses. In the cases of those who only profess or admit tendencies, it is also necessary to distinguish between those who have true homosexual tendencies and those who are not in fact homosexual but who claim to be for the purpose of avoiding military service. In the cases of those who only profess or admit tendencies it is directed that a signed statement from the person concerned relative to such tendencies or actions, together with a report from a psychiatrist or other medical officer and the detailed comments and recommendation of the commanding officer, be submitted for the Department's consideration and action.

In those instances wherein homosexual tendencies are wholly the result of an underlying psychosis, disposition shall be based upon the psychosis.

6. Homosexual acts or offenses are classified as follows:

(A) CLASS I is defined as those cases accompanied by:
(1) Assault or coercion.
(2) Any act in or to which the other person involved did not willingly cooperate or consent, or where consent was obtained through force, fraud, or actual intimidation, thereby constituting an invasion of the rights of another.
(3) Any homosexual action with a child under the age of concent, whether the child cooperates or not.

Disposition: Trial by general court martial is mandatory. Papers recommending trial shall be prepared and submitted to the appropriate convening authority in accordance with Section 344, Naval Courts and Boards.

(B) CLASS II is defined as those cases wherein personnel, while in the naval service, have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality, and which do not fall in the category of CLASS I above.

364

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Subj: Homosexuality - Procedure forthe disposition of cases involving naval personnel

Disposition:

(1) Sample charges and specification for trial by general court martial shall be drawn and the accused shall be confronted with them. He shall then be offered the following alternatives:

(a) Officers shall be informed that acceptance will be recommended of a resignation in tenor as follows: "I hereby tender my resignation for the good of the service and to escape trial by general court martial. I understand that my separation from the naval service effected by acceptance of this resignation will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces may have a bearing."

If an accused officer refuses to submit his resignation so worded he shall be brought to trial by general court martial. Recommendations for trial shall be prepared and submitted to the appropriate convening authority in accordance with Section 344, Naval Courts and Boards.

(b) Enlisted persons shall be informed that a signed statement in tenor as follows, will probably receive favorable action: "I hereby accept an undesirable discharge for the good of the service and to escape trial by general court martial. I understand that my separation from the naval service effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of virtually all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing."

If an accused enlisted person refuses to sign a statement so worded, he shall be brought to trial by general court martial. Recommendations for trial shall be prepared and submitted to the appropriate convening authority in accordance with Section 344, Naval Courts and Boards.

(2) Where personnel have other substantial charges against them for which, in the opinion of the commanding officer and the convening authority, they should be brought to trial by general court martial, resignations or statements will not be forwarded to the Department but such personnel will be brought to trial under appropriate charges, including those setting forth the alleged homosexual acts or offenses.

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(3) The commanding officer shall submit direct to the Department a complete report of each CLASS II offender who is afforded, and who elects the alternative of resignation or undesirable discharge. In all cases the report should include: A full and complete statement from the officer or enlisted person concerned or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of the sample general court martial charge and specification(s); resignation of the officer or agreement by the enlisted person to accept an undesirable discharge as worded in paragraph 6(3)(1) above; and the commanding officer's detailed comments and recommendations. The commanding officer's report will include a psychiatric or medical evaluation of the person concerned.

7. The Navy Department has occasionally encountered misconceptions on the following points: (1) the role of the medical expert in regard to cases involving homosexual acts while in the naval service, as classified in paragraph 6 above; and (2) the degree of culpability of persons who, while in the naval service, have passively participated in homosexual acts. Explanations are therefore supplied as to these matters.

(a) In the cases of one who, while in the naval service, has been the active participant in a homosexual act, opinion of medical experts that the participant is not a "true homosexual" is immaterial in cases concerns following the procedure set forth in the preceding paragraph. In the case of one who, while in the service, has allegedly made an indecent proposal or has attempted to commit a homosexual act, expert medical opinion that he is not a "true homosexual" is of bearing where the words or actions constituting the alleged proposal or attempt are admitted, but the actor contends that he spoke or acted facetiously, with no real intent to engage in a homosexual act. Such an issue will normally be best left to resolution by a general court martial. In the case of one who, while in the naval service, has engaged in a homosexual act as a passive participant, expert opinion that such passive participant is not a "true homosexual" is material only if a contention is made that the participation was not <u>voluntary</u>. In other than clear cases of forcible invasion, this issue is likewise one which can normally be best resolved by a general court martial.

(b) It is emphasized that no distinction is made in administrative handling of cases of alleged participation in homosexual acts while in the naval service, based upon whether the role of a person in any particular act(s) was passive or active. It is the view of the Navy Department that one who voluntarily assumes a passive role in such acts is no less a homosexual than the active participant. Commanding officers should impress this fact upon those under their command.

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Subj: Homosexuality - Procedure for the disposition of cases involving naval personnel.

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8. Care must be exercised that all persons involved are completely investigated and reported and that appropriate information is expeditiously forwarded to other commands as necessary to complete all cases. All information concerning any other homosexuals involved, either civilian or service personnel, will be forwarded to the Department for information and further evaluation. In order to guarantee the availability of essential witnesses in a subsequent court martial proceeding, where such are necessary, no personnel shall be separated from the service without prior reference to the Department until the investigation and disposition of other personnel involved shall have been concluded. No person held solely as a witness shall be confined, unless confinement be deemed reasonably necessary for his own protection.

9. Each case of homosexuality reported to the Department in accordance with the provisions of this directive shall be referred to an appropriate board of officers in the Department who will give full consideration to all the facts and circumstances in the case and will make recommendations as to the disposition to be directed.

10. This procedure shall be followed without exception in all cases of homosexuality arising among personnel, male and female, of the Navy and Marine Corps, Naval Reserve and Marine Corps Reserve while on active duty. The word Department is used herein in connection with the submission of reports and shall be construed to mean either the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate.

/s/ Francis P. Matthews

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THE SECRETARY OF THE NAVY
Washington

1910-3

18 October 1943

MEMORANDUM to: The Chief of Naval Personnel.
The Chief of the Bureau of Medicine and Surgery
The Commandant of the Marine Corps
The Judge Advocate General

1. I am attaching herewith the report of the Committee for the Review of the Procedures for the Disposition of Naval Personnel Involved in Homosexual Offenses, which includes a proposed draft of a letter to all ships and stations, which will replace all current directives. This letter will not be classified, and this unclassified nature of the letter has been a factor in determining some of the provisions.

2. The Committee has attempted in this letter to emphasize the necessity of careful investigation and recording of all data. It has been necessary because of the unrestricted character of the letter to omit certain considerations which I feel must be handled in the Department with some care. I will list what appear to me as important considerations which should be kept in mind in handling such cases at the Departmental level:

(a) Paragraph 4 emphasizes the need for careful investigation and a complete record of all data found. The nature of this matter is such that it may be expected that while the data in some cases does not warrant any further action, the existence of the records constitutes a reflection on apparently innocent individuals. I believe that in many such cases the entire affair would be discarded by a wise commanding officer without further action. The literal interpretation of the present letter, however, may cause commanding officers to forward to the Department complete records, even though no existence of fact has been found. In such cases I believe that specific safeguards should be instituted so that no possible implications will become identified with the record of individuals concerned.

(b) The nature of the separation to be given to personnel who possess apparent homosexual tendencies but who have committed no overt act has been omitted intentionally. There is in this situation an obvious legal difficulty in that we can not administratively separate officers who have completed their probationary period without some basis either for court action or disability procedures. While we do have this authority in the case of enlisted men, the demands of equity are such that I feel that we must

368

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be very careful in awarding prejudicial discharges in these cases. This area of uncertainty I agree should not be published to the service at large, but it is one in which some administrative consideration must be given. The handling of cases in which there are psychiatric implications is specifically covered in the letter.

(c) In paragraph 7 a provision is included that persons held as witnesses shall not be confined. This may need some amplification to the service, but is intended to cover a situation in which we have sometimes been subject to criticism, that is, the indifinite confinement of individuals in brigs awaiting the execution of an undesirable discharge where the delay is entirely a matter of our interest in other cases.

3. I request that the addressees comment on the proposed directive and also on recommended solutions for the problems I have outlined in this memorandum.

JOHN NICHOLAS BROWN
ACTING

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COMMITTEE REPORT OF 24 August 1948

(Referenced only)

(Known extant copy held by Captain G. N. Raines, (RC))

TAB 15

870

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C&S-3 — Disposition of Homosexuals and Those Persons Having Homosexual Tendencies, Enlisted Personnel

[redacted] Pers-631-ap, P13-7, 24 January 1945

ACTION: ALL SHIPS AND STATIONS

(Ref.: (a) SecNav conf. ltr. P13-7(0344-5), of 1 Jun. 1943; Bond. Cum. [illegible] 20 June 1944, C43-15, p. 2.
(b) Buers conf. ltr. Pers-631-car, P13-7, of 28 [illegible], 1944, Cum. Ed. 30 June 1944, C44-12, p. 103.
(c) Sec. 344, Naval Courts and Boards.)

1. The Bureau is concerned regarding the incomplete reports submitted in compliance with the directives in references (a) and (b). The [illegible] in those directives is clear and concise, and must be followed.

2. Under Class I of reference (a) it is clear that the personnel [illegible] should be tried by general court martial, the preparation of the papers necessary for trial to be submitted to the convening authority as directed in prior [illegible]

[illegible] facts [illegible] reference; [illegible] from the patient [illegible] officer [illegible]

[illegible]

[illegible]

[

Pers-651-cdr/P13-7

CIRCULAR LETTER NO. C-44-12

1/28/44

[redacted]

From: BuPers.
To: All Ships and Stations.

Subj: Procedure for the Disposition of Homosexuals Among Personnel of the United States Naval Service.

Ref: (a) SecNav conf. ltr P13-7 (83443) of 1 January 1943.

1. Reference (a), prescribes the action to be taken in those cases where naval personnel admit or evidence supports proposal, attempt, or completion of homosexual acts while in the naval service.

2. In the cases of Naval personnel who admit homosexual tendencies or actions but in whose cases it cannot be proved that homosexual acts have been committed while in the Naval service, the Bureau directs that a signed statement from the personnel concerned relative to such tendencies or actions be submitted to this Bureau along with a report from a psychiatrist or other medical officer and the detailed comment and recommendation of the Commanding Officer for the Bureau's consideration and action.

3. The necessity is noted for distinguishing between homosexuals and those who are not in fact homosexuals but who claim to be for the purpose of avoiding military service.

/s/ L. E. DENFELD

Published in Conf. Navy Dept. Bulletin semi-monthly of 31 January 1944.

(COPY-BUPERS-7/2/47-Ed)

TAB 17

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OFFICE OF THE SECRETARY

[illegible]
Pl3-7 - [illegible]
January 1, 1943.

From: The Secretary of the Navy.
To: All ships and Stations.

Subject: Procedure for the DISPOSITION OF HOMOSEXUALS among Personnel of the U. S. Naval Service.

1. It has been a source of some concern to the Department that the action taken in regard to cases of homosexuality among naval personnel has lacked uniformity. Varying punishment has been inflicted in comparable cases. In addition to this inequity, the Department believes that heed should be given to the opinions of physicians and penologists who believe its treatment of homosexuals to be, to some degree, archaic. Consequently, the Department sets forth herein a standard procedure for the disposition of such cases among its personnel.

2. It is the generally accepted opinion that homosexuality in the majority of cases, is a medical rather than a criminological problem. It results from the faulty biological development of the individual and, after the condition has sufficiently developed, the conscious will of the homosexual individual is unable to change any of his perverse desires. The fact, however, that homosexuality is primarily a medical problem does not affect the criminal nature of the acts of certain homosexuals. Society must forbid homosexual assaults or any other homosexual act which presents a threat to, or the invasion of, the rights of others or to the security of the social order as a whole. Socially dangerous homosexuals must be isolated.

3. For the purposes of the procedure laid down herein, therefore, homosexual acts are to be divided into two classes:

Class I is defined as those cases accompanied by assault or coercion; any action with a child under the age of consent, whether the child cooperates or not; or the invasion, or any action accompanied by the invasion, of the rights of others, so long as the other person concerned in the act did not willingly cooperate.

Class II is defined as acts representing the habitual performances of persons actually homosexual in their inclinations and involving no invasion of the right of others.

4. The following procedure will therefore be carried out in the disposition of all cases of homosexuality:

I. When a case of homosexuality has been brought to the attention of the commanding officer, he shall assure a

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373

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thorough inquiry into the circumstances in order:
(a) whether an offense should be rightly classified under Class 1 of Class 2 as defined in the preceding paragraph. In this determination, the assistance of a psychiatrist or, if none be available, of the senior medical officer present should be sought.

II. If the case is classified as Class 2 as defined in paragraph three thereof, charges and specifications for trial by general court martial shall be drawn and the accused shall be confronted with them. At the same time he shall be offered the following alternative:

(a) Officers shall be informed that a resignation containing the words "for the good of the service and to escape trial by general court martial" will probably meet with favorable consideration.

(b) Enlisted men shall be informed that a signed statement as follows "I hereby accept an undesirable discharge for the good of the service and to escape trial by general court-martial" will probably receive favorable action.

(c) Members of the naval service who hold a permanent enlisted rating and a temporary appointment to officer rank shall be informed that favorable action will probably be accorded to a signed statement as follows: "I hereby consent to the termination of my temporary appointment to officer rank and accept an undesirable discharge for the good of the service and to escape trial by general court martial."

Except in the most extraordinary situations, resignations so worded shall be accepted, and where such statements are signed, discharges as undesirable issued in cases of this character. In the case of an officer, his commanding officer shall at once forward to the Chief of Naval Personnel all papers obtained in connection with the case, including the statements of witnesses. In the case of an enlisted man, a brief account of the circumstances shall be entered in his service record.

If the accused, if an officer, refuses to submit his resignation so worded, or if an enlisted man, to sign a statement so worded, he shall be tried by general court martial on the charges and specifications.

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J. M. RYAN,
Lt. (jg) USNR

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III. 3. If it shall be determined that the case falls within Class 1 as defined in paragraph three, trial by general court martial OFFICER OR MAN shall be the only recourse.

Where the accused is convicted and sentence of confinement has been adjudged and approved by the Secretary of the Navy, the offender shall appear at the place designated for his confinement before a suitable board appointed by the Secretary of the Navy to consist of three officers, one of whom shall be a psychiatrist. After appropriate study, this board shall recommend whether the sentence as confirmed be executed in a naval prison or whether in lieu thereof, the offender shall be committed to an institution for the insane, to remain there for an indefinite period, until it be determined that his release will be in the best interests of society.

The questions of parole, discharge prior to serving full sentence, etc., of those who are required to serve their sentence in a naval prison shall be subject to the decision of the present parole board, one member of which shall be a psychiatrist.

This procedure shall be followed without exception in all cases of homosexuality arising among personnel of the Navy and Marine Corps, Naval Reserve, and Marine Corps Reserve while on active duty, including the Women's Reserve.

FRANK KNOX.

Certified To Be a True Copy

J. A. RYAN
Lieut. (jg) U.S.N.R.

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CHRONOLOGICAL DEVELOPMENT

POLICY AND PRACTICE ON DISPOSITION OF NAVAL PERSONNEL INVOLVED IN HOMOSEXUAL ACTIVITY

A. PRIOR 1943 -

1. UNDER ART 22, ARTICLES FOR THE GOVERNMENT OF THE NAVY; GENERAL COURT MARTIAL:

- OFFICER: DISMISSAL, 12 YEARS CONFINEMENT AT HARD LABOR

- ENLISTED: 10 YEARS CONFINEMENT AT HARD LABOR, DISHONORABLE DISCHARGE

2. ADMINISTRATIVELY:

- AS UNFIT, UNDER BUNAV, BUPERS MANUAL. GENERAL STANDARDS OF UNFITNESS.

a. IN 1913 FIRST STANDARDS OF UNFITNESS AND SAFEGUARDS PROMULGATED FOR GUIDANCE OF COMMANDING OFFICERS.

b. IN 1943 REQUIRED TO OBTAIN BUPERS APPROVAL. 1ST BOARD ESTABLISHED IN BUREAU.

(NO EXPLICIT HOMOSEXUAL POLICY PRIOR TO 1943)

B. PROMULGATION SECNAV LTR OF 1 JAN 1943

1. SOURCE: RECOMMENDATION COMMITTEE ON NEURO PSYCHIATRY, NATIONAL RESEARCH COUNCIL.

a. DUE LARGE WARTIME INFLUX OF HOMOSEXUALS.

2. POLICY: RECOGNIZED TWO CLASSES OF HOMOSEXUALS.

a. CLASS I - AGGRESSOR, WITH FORCE. MANDATORY GENERAL COURT MARTIAL.

b. CLASS II - ALL OTHER HABITUAL, OVERT HOMOSEXUALS, ON SUFFICIENT EVIDENCE OF IN-SERVICE ACTS OR ATTEMPTS SUBJECT TO UNDESIRABLE DISCHARGE BY ADMINISTRATIVE ACTION OF COMMANDING OFFICER.

3. REQUIRED ACCEPTANCE UNDESIRABLE DISCHARGE BY INDIVIDUAL TO ESCAPE GENERAL COURT MARTIAL.

4. EFFECTS:

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a. PROVIDE FOR ADMINISTRATIVE SEPARATION INSTEAD OF TRIAL BY GENERAL COURT MARTIAL OF ALL PERSONS INVOLVED IN ENCOUNTERS HOMOSEXUAL ACTS OR ATTEMPTS WHICH REPRESENT HABITUAL CONDUCT.

b. FAILED TO PROVIDE CLEARLY FOR ELIMINATION OF CURRENT CLASS III (TENDENCIES ONLY, PRE-SERVICE ACTS, ETC.)

C. PROMULGATION BUPERS LTR OF 28 JAN 1944

1. SOURCE: FLEET ENQUIRIES ON PERSONNEL NOT FALLING CLEARLY WITHIN EXISTING DEFINITIONS.

2. POLICY: RECOGNIZED THIRD CLASS OF HOMOSEXUALS:

a. ADMITTED ACTS OR TENDENCIES, BUT NO PROVABLE ACTS WHILE IN NAVAL SERVICE. (ASSIGNED NO CLASS DESIGNATION).

3. REQUIREMENTS: (FOR NEW CLASS ONLY)

a. STATEMENT BY INDIVIDUAL RELATIVE ACTS/TENDENCIES

b. PSYCHIATRIC OR MEDICAL REPORT

c. COMMANDING OFFICER'S COMMENT

d. BUPERS APPROVAL TO DISCHARGE

4. LETTER NOTED PROBLEM OF HOMOSEXUAL ADMISSIONS TO ESCAPE MILITARY SERVICE.

5. EFFECT: COMPLETED PROVISION FOR ELIMINATION ALL ACTIVE AND POTENTIAL HOMOSEXUALS, AND PARTICIPANTS IN HOMOSEXUAL ACTIVITY.

D. PROMULGATION BUPERS LTR 24 JAN 1945.

1. ADMONITION TO COMPLY WITH EXISTING SECNAV AND BUPERS LETTERS.

2. DIRECTIVE TO SUBMIT DOUBTFUL CLASS II CASES FOR BUPERS DECISION.

E. PROMULGATION CHANGE NO. 7, BUPERS MANUAL, 19 July 1945.

REQUIRED BUPERS PRIOR APPROVAL, ALL UNDESIRABLE DISCHARGES, ANY CAUSE OR REASON.

F. PROMULGATION SECNAV LETTER 14 JULY 1949.

1. SOURCE:

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a. NAVAL CLEMENCY BOARD RECOMMENDATION OF ABOUT FEB 1948 FOR CONSOLIDATED DIRECTIVE.

b. REPORT OF COMMITTEE FOR REVIEW OF PROCEDURES FOR DISPOSITION OF NAVAL PERSONNEL INVOLVED IN HOMOSEXUAL OFFENSES DATED 5 AUG 1948.

2. POLICY:

a. MAINTAINED EXISTING CLASS I, II AND A THIRD CLASS (NO IN-SERVICE ACTS).

b. REQUIRED BUPERS BOARD ACTION AND APPROVAL, ALL CASES, FOR ADMINISTRATIVE DISCHARGE.

c. EXPANDED BACKGROUND INFORMATION AND INSTRUCTIONS.

d. REQUIRED INDIVIDUAL'S STATEMENT AND ACCEPTANCE OF UNDESIRABLE, NOTING EFFECT ON VETERANS' RIGHTS/BENEFITS.

e. SPECIFIED TRIAL IF OTHER DISCIPLINARY ACTION PENDING. TO INCLUDE CHARGES AND SPECIFICS ON HOMOSEXUAL OFFENSE.

G. PROMULGATION SECNAV LTR OF 10 DEC 1949

1. SOURCES:

a. SECDEF MEMO OF 11 OCT 1949

FOLLOWING ON

b. REPORT OF MILITARY PERSONNEL POLICY COMMITTEE (PROJECT M-46) OF 24 AUG 1949

2. POLICY AND PRACTICE

a. ESTABLISHED THIRD CLASS AS CLASS III

b. ESSENTIALLY AS BEFORE IN ALL RESPECTS

H. [illegible], 1952

1. BASIS: ASS'T SECDEF (MP&R) MEMO OF 28 JULY 19[illegible] DIRECTING STUDY OF PROCESSING CLASS III.

2. RESULT:

a. REPORT OF COMMITTEE TO REVIEW POLICY ON DISCHARGE OF HOMOSEXUALS OF 24 OCT 1952.

(1) RECOMMENDED BROADENED 6 MONTHS' STUDY
(2) NO OTHER RECOMMENDATIONS
(3) ADVERSE TO CURRENT POLICY ON ALL EXCEP. CLASS I CASES.

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b. DISSENTING REPORT, SAME COMMITTEE (3 OF 15 MEMBERS IN DISSENT) OF 28 NOV 1952.

(1) RECOMMENDED NO ESSENTIAL CHANGE IN CURRENT POLICY BEYOND BROADENED, UNRESTRICTED RESTATEMENT.

I. SECNAV INSTRUCTION 1620.1 OF 5 JUNE 1953

1. REISSUED UNCHANGED WITHIN DIRECTIVES SYSTEM; SEE LTR OF 10 DEC 1949.

a. EXCEPTION: PRESCRIBED WARNING OF SUSPECTS UNDER ARTICLE 31.

J. BUPERS INSTRUCTION 1620.3 OF 6 OCT 1953

INFORMATION CONCERNING HOMOSEXUALITY

K. PROPOSED REVISION OF SECNAV 1620.1 (1955-56)

1. BASIS:

a. ASST SECNAV (P&RF) PENCILED MEMO OF 3 JUL 1955: TO PERMIT RETRACTION STATEMENTS MADE UNDER DURESS.

b. ASST SECNAV (P&RF) MEMO OF 16 OCT 1956 IN CLASS II CASES ONLY, TO REDUCE MANDATORY REF TO TRIAL BY ANY APPROPRIATE COURT MARTIAL. IN CLASS I CASES; GCM REMAINS MANDATORY.

2. PROCED. St; DRAFT III DORMANT IN ENLISTED PERFORMANCE DIVISION SINCE APRIL 1956.

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25 February 1957

CHRONOLOGICAL DEVELOPMENT OF POLICY AND PRACTICE ON DISPOSITION OF NAVAL PERSONNEL INVOLVED IN HOMOSEXUAL ACTIVITY

1. In the year 1913, the first standards of unfitness were promulgated to commanding officers. Additionally, BuNav Instructions and later the BuPers Manual, have since this time contained criteria for general standards of unfitness. These were administrative definitions. Prior to 1943, homosexual conduct normally was handled under the provisions of Article 22, Articles for the Government of the Navy as a general court-martial offense. Article 22 provided dismissal accompanied by 12 years confinement at hard labor for officers and dishonorable discharge with 10 years confinement at hard labor for enlisted personnel as maximum penalties. There was no explicit homosexual policy, as such, prior to 1943, however, some cases were handled as being generally unfit for service.

2. The Secretary of the Navy promulgated a letter on 1 January 1943 as a result of a recommendation of the National Research Council (Committee on Neuropsychiatry) relative to homosexuality, and as a result of a probable large wartime influx of homosexuals. A policy statement was written at that time recognizing two classes of homosexuals: Class I; aggressor (accompanied by force) required a mandatory general court-martial: Class II; all other habitual homosexuals who participated in in-service acts or attempts, were subject to undesirable discharge by administrative action on the part of the commanding officer. This procedure required acceptance of the undesirable discharge in order to escape trial by general court-martial. This letter, while a step toward positive uniform action, still left the Navy without any means of eliminating individuals who had tendencies only, or, who had a history of pre-service acts alone, except as a personality disorder.

3. As time passed, existing instructions were deemed inadequate since there were many cases not falling within the existing definitions. Therefore, on 28 January 1944, the Chief of Naval Personnel issued a letter which recognized a third class of homosexuals. This dealt with those persons who admitted pre-service acts or tendencies and those without provable acts within the naval service. Approval of the Chief of Naval Personnel was required to execute these discharges. Also required, were a statement made by the individual, a psychiatric or medical report and the commanding officer's comment. This letter noted the problem that some persons might admit homosexual tendencies in order to escape military service.

4. The Chief of Naval Personnel on 24 January 1945, issued a letter, in the nature of an admonition to comply with existing SecNav and BuPers letters and further directed that doubtful cases be referred to the Bureau for final decision.

5. On 19 July 1945, Change No. 7 to the BuPers Manual required prior BuPers approval for all undesirable discharges regardless of cause.

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6. On 14 July 1949, the Secretary of the Navy issued, as a result of a recommendation from the Naval Clemency Board and of an Adhoc Committee which studied homosexual offenses, a letter on this subject defining the present day Classes I, II, and a third class of offender. This required BuPers action and approval prior to discharge; expanded on background information and instruction; required an individual statement and acceptance of undesirable discharge, noting the effect on Veterans' Rights/ Benefits and specified trial if other disciplinary action was pending to include trial for the homosexual charges also.

7. As a result of a SecDef memo of 11 October 1949, a new SecNav letter was issued on 10 December 1949 which established the third classification of homosexual as a Class III offender but which was essentially the same instructions for the Class I and II offender.

8. In 1952, a study was conducted as a result of the Assistant Secretary of Defense (MP&R) memo of 28 July 1952, which directed the study of the disposition of Class III cases. The report of this Committee was adverse to current policy on all but the Class I cases and recommended that further intensive study be conducted. Approximately 50% of the members dissented with the findings and recommended that no essential change be made in the current policy.

9. On 5 June 1953, SecNav Instruction 1620.1 reissued the SecNav letter of 10 December 1949 with the additional item that suspects should be warned in accordance with the provisions of Article 31, UCMJ. This was followed by BuPers Instruction 1620.3 promulgated 6 October 1953, which amplified existing information published on homosexuality.

10. Assistant Secretary of Defense (MP&R) by memoranda, one of 3 January 1955, indicated that the retraction of statements made under duress was permissible and one of 19 November 1955, indicated that any appropriate court-martial might be applicable except in Class I cases wherein the general court-martial would remain mandatory. At the present time, a draft III of a proposed revision of SecNav Instruction 1620.1, taking into account the above two Secretarial memos, is in the Enlisted Performance Division.

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10276 DISCHARGE FOR REASON OF INAPTITUDE

1. The Commandant of the Marine Corps may direct the discharge of an enlisted person for inaptitude.

2. A discharge for inaptitude should be recommended only when it is determined that the enlisted person does not possess the required degree of adaptability to Marine Corps life, after reasonable attempts have been made to reclassify and reassign him in keeping with his abilities and qualifications. This category includes persons whose inaptness may be due to lack of general fitness, want of readiness or skill, or unhandiness. A discharge for inaptitude is also appropriate in a less serious case than would warrant a discharge for reason of unfitness. Enlisted personnel shall not be discharged for inaptitude as a punishment or in lieu of a court-martial. If doubt exists as to the existence of a mental or physical disability as a cause of the inaptitude, the person should be brought before a board of medical survey for a determination of fact.

3. Commanding officers shall not effect the discharge of enlisted personnel for inaptitude except when specifically authorized by the Commandant of the Marine Corps. When a commanding officer considers an individual inapt for further retention, he may refer the case to the Commandant of the Marine Corps (Code DMB) for decision. Prior to recommending the discharge of an enlisted person for inaptitude, the commanding officer shall investigate the case. The person concerned shall be informed of the contemplated action and the reasons therefor, and shall be given an opportunity to make any statement in his own behalf that he may desire. In every case of discharge for inaptitude recommended by a commanding officer, a complete statement giving all the circumstances bearing on the case, and a final statement from the person concerned shall be forwarded together with information setting forth the attempts made to reclassify or reassign him in keeping with his ability and qualifications.

10277 DISCHARGE FOR REASON OF UNFITNESS

1. The Commandant of the Marine Corps and Commanding Generals exercising general court-martial jurisdiction may direct the discharge or retention in the service of enlisted or inducted persons recommended for discharge by reason of unfitness, except that all cases involving homosexuality, will be referred to the Commandant of the Marine Corps (Code DK) for decision.

2. An enlisted or inducted person will be recommended for discharge for reason of unfitness only after that person has already demonstrated total unfitness for further retention, and to rid the service of persons who are useless. In this category are persons who:

a. Give evidence of habits or traits of character manifested by:

(1) Anti-social or anti-moral trends.

(2) Criminalism.

(3) Chornic Alcoholism.

(4) Drug addiction.

(5) Pathological Lying.

(6) Sexual perversion.

(7) Homosexuality.

(8) Misconduct.

b. Repeatedly in a disciplinary status because of infractions of regulations and/or commission of offenses.

c. Are habitual shirkers.

d. Possess unclean habits, including repeated venereal infections.

e. Are recommended for discharge by a board of medical survey, not because of mental or physical disability, but because they possess personality disorders or defects, or are classified as having "no disease" by the board, and inspection of their service record reveals that they have been frequently in a disciplinary status because of infractions of regulations and commission of offenses, and/or it is clearly evident that their complaints are unfounded and made with the intent of avoiding service.

3. In considering cases of personnel in the above categories, if there is a reasonable doubt as to the unfitness of the individual, the doubt shall be resolved in favor of the Marine concerned and that person shall be retained in the service.

4. Before recommending a discharge for unfitness, the commanding officer or officer in charge shall investigate each case. The circumstances, facts, and offenses shall be substantiated by service record entries and transcripts thereof shall be enclosed with the recommendation. The person concerned shall be informed of the contemplated action and the reasons therefor, and shall be given an opportunity to present any facts or make a statement. Prior to receiving any statement, the provisions of Article 31, Uniform

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Code of Military Justice, shall be read and carefully explained to the individual. If the person does not elect to make a statement, the facts shall be clearly set forth that he was accorded the opportunity to do so and declined. All recommendations indicating the existence of a mental or physical disability will be supported by a report of a medical board, including a psychiatrist in cases of personality disorders or other mental infirmities, if practicable.

5. At the time of submission of a recommendation for discharge, an entry will be made on page 11 of the service record book showing this fact and the reason therefor. If recommendation for discharge is disapproved, an entry to this effect will likewise be recorded on page 11 of the service record book.

6. A board consisting of not less than three officers shall be appointed by each Commanding General exercising general court-martial jurisdiction for the purpose of considering all recommendations for undesirable discharge and to make recommendations to the Commanding General as to the final disposition of each case. The membership of the board shall include at least one woman officer when a case of an enlisted woman is under consideration, and at least a majority of the members of the Board shall be Reserve officers whenever the Board is considering Reservists. Should it not be possible to meet these requirements from personnel available locally, the case will be referred to the Commandant of the Marine Corps (Code DK) for decision.

7. The recommendation for discharge, the proceedings of the board, and recommendation thereon will be submitted to the Commanding General for approval or disapproval. Should the recommendation of the board be approved, the Commanding General may immediately direct discharge or retention of the individual concerned. Should the recommendation of the board not be approved, the Commanding General shall forward the entire proceedings to the Commandant of the Marine Corps (Code DK) for decision. In any case where there is question as to proper disposition, the matter will be referred to the Commandant of the Marine Corps (Code DK) for instructions.

8. When final action is taken on any report or recommendation, all papers shall be forwarded to the Commandant of the Marine Corps (Code DK) for review.

9. If personnel recommended for discharge are serving outside the continental United States, they shall be transferred to the nearest Marine Corps activity in the continental United States by the Commanding General who directs the discharge. If there be no such Commanding General, the commanding officer or officer in charge will transfer the personnel recommended for discharge to the continental United States to await instructions from the Commandant of the Marine Corps. The letter requesting authority for discharge shall state the name of the activity to which the enlisted person will be transferred and an information copy of that letter shall be forwarded to the activity concerned. Where the post or station is not definitely known, the copy will be furnished to the Commanding General, Department of the Pacific, for personnel serving in the Pacific area and to the Commandant of the Marine Corps (Code DK), with a copy of the transfer orders, for personnel serving in the Atlantic and Caribbean area.

10278 DISCHARGE FOR REASON OF MISCONDUCT

1. General instructions relating to discharge by reason of misconduct are as follows:

a. The Commandant of the Marine Corps and commanding generals exercising general court-martial jurisdiction may direct the discharge or retention in service of enlisted or inducted personnel recommended for discharge by reason of misconduct, except that all cases where the basis for discharge is concealment of juvenile or youthful offender records and retention is not considered warranted, and cases involving desertion where trial is barred by the statute of limitation will be referred to the Commandant of the Marine Corps (Code DK) for decision. No action for retention of personnel shall serve to hold such members beyond the normal date of discharge or date of release from active duty.

b. When an individual is to be retained in the service and civil restraint (including probationary reporting) exists, civil authorities will be requested to terminate or suspend such restraint for the duration of the enlistment. (This action should be taken by the commanding general making the final determination or by the Commandant of the Marine Corps in cases where the Commandant of the Marine Corps makes final determination as to retention in the service.)

2. The commanding officer or officer in charge shall make a report of suspected or apparent misconduct of enlisted or inducted persons for any of the following reasons and shall include in the report a recommendation for discharge or retention in the service of the person concerned:

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a. Desertion and trial barred by the statute of limitations.

b. Desertion and trial not barred by the statute of limitations, but where, upon examination, the individual is found not physically or mentally competent to stand trial and evidence indicates competence at the time of desertion.

c. Conviction by civil authorities of a criminal offense, where the offense may be punishable by death, or imprisonment for a term exceeding one year, or which involves moral turpitude; or adjudged a juvenile delinquent or youthful offender as a result of an offense involving moral turpitude.

d. Procurement of a fraudulent enlistment or induction through any deliberate misrepresentation or concealment regarding the member's qualification for enlistment or induction when without such misrepresentation or concealment the member otherwise may have been rejected. This includes concealment of:

(1) A police record, or, in the case of inductees, a conviction by a civil court.

(2) A record as a juvenile delinquent or youthful offender.

(3) Previous service in any branch of the Armed Forces.

(4) Physical defects.

(5) Marriage or dependents.

3. The enlistment of a minor with false representation as to age will not alone be considered a fraudulent enlistment; see paragraph 10274.

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13

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of a woman who has attained age 18 but has not yet attained age 21, discharge may be authorized upon request from parent or legal guardian and presentation of satisfactory evidence of the minor's age, provided that such request and evidence are received prior to the date on which the minor attains age 21. If no such request is received in the case of a woman minor who enlisted after attaining the statutory age for enlistment, tacit consent of the parent or guardian is recognized. (Change No. 6.)

(5) Special instructions will be issued by the Bureau to certain commands, from time to time, relative to the disposition to be made in cases of minors who, after enlistment, are discovered to have misrepresented their ages or to have enlisted without proper consent. In the absence of such special instructions any cases in the above categories shall be reported promptly to the Chief of Naval Personnel for consideration and disposition.

(6) The enlistment of a minor with false representation as to age, or without consent, will not in itself be considered a fraudulent enlistment. (See article C-10316 concerning cancellation of enlistment.)

(7) The commanding officer effecting a minority discharge shall notify the next of kin, giving the type of discharge and, in general terms, the reason for discharge. Care and discretion shall be exercised in phrasing the notification in order that the reason for discharge may not be construed by the persons concerned as derogatory to the individual or to reflect adversely on his character.

C-10310. DISCHARGE OF ENLISTED PERSONNEL FOR REASON OF UNSUITABILITY

(1) The Bureau may authorize or direct the discharge of enlisted personnel for unsuitability. Discharge will be effected for this reason by the Bureau to free the service of persons considered unsuitable because of psychiatric or neurological handicaps, enuresis, personality disorders or defects, or other good and sufficient reason when determined by administrative process.

(2) Commanding officers shall not effect the discharge of enlisted personnel for unsuitability except when specifically authorized or directed by the Bureau. The commanding officer shall refer the case to the Chief of Naval Personnel for decision if he considers that an individual is unsuitable for further retention in the naval service. Prior to recommending the discharge of an individual for unsuitability the commanding officer shall thoroughly investigate the case. The person concerned shall be informed of the contemplated action, with the reason therefor, and shall be given an opportunity to submit any signed statement desired in own behalf. If he does not desire to make a statement at that time an entry to that effect shall be made in his service record and signed by the person concerned. If there is doubt of the existence of a mental or physical disability as the cause for unsuitability, the enlisted person should be brought before a board of medical survey for a determination of fact. In every case of discharge for unsuitability recommended by a commanding officer a complete statement giving all the circumstances of the case, together with any signed statement from the person concerned, shall be forwarded to the Chief of Naval Personnel.

(3) Individuals shall not be recommended for discharge for unsuitability as a punishment or in lieu of a court martial.

(4) Enlisted personnel separated by reason of unsuitability will be required to refund a pro rata portion of the reenlistment bonus (if paid upon reenlistment or upon extension of enlistment) only when specifically directed by the Chief of Naval Personnel. (See art. A-4204.) (Change No. 8.)

(5) Special instructions as to the procedure to be followed for the elimination of the unsuited among newly enlisted personnel will be issued from time to time to naval training activities by the Bureau.

C-10311. DISCHARGE OF ENLISTED PERSONNEL FOR REASON OF INAPTITUDE

(1) The Bureau may direct the discharge of an enlisted person for inaptitude.

(2) A commanding officer of the grade of lieutenant commander or above is authorized to transfer for and direct discharge for reason of inaptitude a person serving in the first 2 years of a first enlistment whose general qualifications are such as not to warrant retention in the service. A commanding officer below the grade of lieutenant commander shall obtain the approval of the next senior in command whose grade is that of lieutenant commander or above before effecting transfer for such discharge. In order that the Bureau may be in a position to sustain the action it is essential that the instructions of this article be followed carefully.

(3) A discharge for reason of inaptitude should be directed only when it is determined that the enlisted person does not possess the required degree of adaptability for Navy life after reasonable attempts have been made to reclassify and reassign him in keeping with his abilities and qualifications. This category includes persons whose inaptness may be due to want of readiness or skill, or unhandiness. An individual shall not be discharged for inaptitude as a punishment or in lieu of a court-martial. If there is doubt of the existence of a mental or physical disability as a cause of the inaptitude, the individual should be brought before a board of medical survey for a determination of fact. (Change No. 16)

(4) Prior to directing or recommending the discharge of an individual for inaptitude the commanding officer shall thoroughly investigate the case. The person concerned shall be informed of the contemplated action, with the reason therefor, and shall be given an opportunity to submit any signed statement desired in his own behalf. If he does not desire to make a statement at that time an entry to that effect shall be made in his service record and signed by the person concerned. In every case of transfer for discharge effected under this authority, full entry shall be made on the ad-

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ministrative remarks page of the service record as to the nature of the inaptitude and any other facts bearing on the case. Any statement of the individual must be attached to the service record. (Change No. 3.)

(5) The authority granted commanding officers in paragraph (2) of this article to direct discharge for reason of inaptitude does not preclude referring unusual cases to the Chief of Naval Personnel for decision when such action is considered advisable. All cases wherein the commanding officer is not authorized to direct discharge for inaptitude shall be referred to the Bureau for decision. When a case is referred to the Bureau one signed copy of the individual's statement shall be forwarded, together with a complete history of the case. This history shall set forth the attempts made to reclassify and reassign the individual in keeping with that person's abilities and qualifications.

C-10312. DISCHARGE OF ENLISTED PERSONNEL FOR REASON OF UNFITNESS

(1) The Bureau may direct the discharge of an enlisted person for unfitness.

(2) Discharges by reason of unfitness for any cause, regardless of circumstances attending, will be effected only on instructions of the Chief of Naval Personnel. These instructions shall be requested without delay in order that undesirable enlisted personnel may not be retained in the service any longer than necessary. Certified copies of all pages 6, 9, and 13 from the current service record, completed to date, shall accompany the request. If the person recommended for discharge is then serving beyond the continental United States, such person will be transferred to the appropriate separation activity in the continental United States nearest the port of debarkation to await this Bureau's instructions. (For exceptions see art. C-10201 and C-10203.) The letter requesting authority shall state at what port of debarkation it is expected the enlisted personnel will arrive, and an information copy of that letter shall be forwarded to the commandant concerned. Enlisted personnel serving on board ships operating within continental limits of the United States and at shore stations in the continental United States will normally be retained at their duty station pending receipt of the Bureau's instructions regarding their discharge from or retention in the naval service. When considered necessary or desirable to deviate from this procedure, and when transfer of personnel to a separation activity is made, the transfer orders and records must reflect the person's status, reasons for transfer, and other pertinent facts and circumstances. This procedure is mandatory in order to insure that the correct type of discharge is awarded by the Chief of Naval Personnel. (Change No. 3.)

(3) An enlisted person will be recommended for discharge for reason of unfitness to free the service of persons who are useless, only after that person has already demonstrated total unfitness for further retention. In this category are:

(a) Persons who give evidence of habits or traits of character manifested in antisocial or antimoral trends, criminalism, chronic alcoholism, drug addiction, pathological lying, or sexual perversion or misconduct.

(b) Persons who repeatedly commit petty offenses not necessitating trial by courts-martial.

(c) Persons who are habitual shirkers.

(d) Persons who are of unclean habits.

(e) Persons who are recommended for discharge by a board of medical survey, not because of physical or mental disability, but rather because they possess personality disorders or defects; or are classified by the board as having "no disease" and inspection of their record of service reveals that they have been frequently in a disciplinary status because of infractions of regulations and commissions of offenses.

(4) Before recommending such a discharge, a commanding officer shall investigate thoroughly each case. The circumstances, facts, and offenses shall be included in the recommendation. The person concerned shall be informed of the contemplated action, and the reasons therefor, and shall be given an opportunity to appear and present any facts or submit any signed statement in own behalf that he may desire. If he does not desire to make a statement at that time an entry to that effect shall be made in his service record and signed by person concerned. If there is doubt of the existence of a mental or physical disability as the cause for unfitness, the enlisted person should be brought before a board of medical survey for a determination of fact.

(5) In every case of discharge recommended under this authority a complete statement giving all the circumstances of the case, together with any signed statement from the person concerned, shall accompany the recommendation.

(6) Requests for authority to effect discharge by reason of unfitness, relating to immoral conduct, shall be accompanied by all information, statements and reports in accordance with this article and special directives issued by the Secretary of the Navy and by the Chief of Naval Personnel.

(7) The commanding officer shall not recommend discharge for unfitness in lieu of punishment for an offense committed. After disciplinary action has been taken for an offense the commanding officer may recommend discharge for unfitness as a separate and distinct action based on the evidence listed in paragraph (3) of this article.

(8) Enlisted personnel separated by reason of unfitness will be required to refund a pro rata portion of the reenlistment bonus (if paid upon reenlistment or upon extention of enlistment). (See art. A-4204.) (Change No. 8.)

C-10313. DISCHARGE OF ENLISTED PERSONNEL FOR REASON OF MISCONDUCT

(1) The Bureau may direct the discharge of an enlisted person for misconduct in any of the following cases:

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THE ASSISTANT SECRETARY OF THE NAVY
PERSONNEL AND RESERVE FORCES

Washington

19 Nov 1955

MEMORANDUM

To: Chief of Naval Personnel
Judge Advocate General

Subj: Increased Flexibility in Court Martial Procedure for Class II Homosexuals

Ref: (a) SECNAV INSTRUCTION 1620.1

1. During my visit to the SIXTH Fleet, I was briefed extensively by the Legal Officer on ComSIXTH Fleet's Staff. There are only three Legal Officers in addition to him. If a General Court Martial is convened, all three of the other Legal Officers have to be called in; one to serve as Law Officer, one as Trial Counsel, and one as Defense Counsel. Hardy himself, has to stay aloof in order that he may review the proceedings. Accordingly, convening a General Court Martial can seriously interrupt the normal course of business.

2. Commander Hardy feels that there are a lot of Class II homosexual cases where the sentence would not be more severe than six months confinement and a Bad Conduct Discharge. In such cases, he believes that trial by Special Court Martial should be permitted.

3. Accordingly, I propose to modify reference (a) as follows: Change paragraph 5b(2) to provide that the offender will be recommended "for trial by the appropriate type of court martial". Paragraph 5b(3), (4), and (5): Delete the word "general" wherever it appears before court martial, except the last line of subparagraph 5b(3)(a)2 and 5b(3)(b)2.

4. Originally, he suggested that Special Courts should be discretionary for the Fleet Commander in Class I cases as well, but I think we had better let that stay the way it is.

/s/ Albert Pratt
/t/ Albert Pratt

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Memorandum • UNITED STATES GOVERNMENT

TO : COMMANDER POWELL, NAVY DISCHARGE REVIEW BOARD (NAVY) Date

FROM : COMMANDER O'MALLEY

SUBJECT: NDRB case of Robert Franklin WAYMAN, ex-CPL, [illegible], USMC

Encl: (1) NDRB Review of discharge DRL363, approved by Mr. Pratt
(2) Copy of CMC memo DKH-2331-jv of 19 May 1955 to SecNav
(3) Mr. Pratt's memo of 6/3/55 to CDR O'Malley

The attached correspondence is forwarded, pursuant to our telephone conversation of this date.

Respectfully,

CMD. F. O'MALLEY

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From: Commandant of the Marine Corps
To: Secretary of the Navy

Subj: Court and Investigation in the case of [illegible], Corporal, U.S. Marine Corps (13[illegible]32)

1. It is the opinion of the majority of the Board that the interests of justice will be served if the case is reopened. Evidence to establish that the separation under other than honorable conditions was executed to have passed when the individual, having been confronted with a choice, confirmed his decision by signing an agreement to accept such discharge in lieu of trial by court-martial. Except in the most unusual cases, this choice is considered to be irrevocable insofar as the individual is concerned by reason of the following:

a. Paragraph 5 (2) of the applicable instruction states in part "Separation will be accomplished by administrative action under other than honorable, [illegible]." (Emphasis supplied). This is interpreted to indicate that trial by court-martial of this type case is to be avoided provided the individual concerned agrees. It is submitted that this interpretation is borne out by the provisions of paragraph 5 (4). This provision indicates that there must be certain other circumstances present before trial by court-martial may be ordered without giving the individual a choice or contrary to his choice.

b. The choice of the individual is an [illegible] presumed to have been made after full consideration of the alternatives involved.

c. Good administration of the applicable instruction requires that the individual be confronted with the alternatives available. Such [illegible] available evidence indicates that a court-martial is probable. If this is not the circumstance as [illegible] investigation possibly [illegible] has been effected, the result should be the [illegible] the individual [illegible] or the matter is closed without further action.

d. Also, good and efficient administration requires that the individual is granted a choice of procedure [illegible] concerned with his service. The choice must at some time [illegible] a position will imply [illegible] or choices [illegible] later date. Accordingly, circumstances being [illegible] having been made, the decision should be irrevocable [illegible] is concerned.

3938

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PROCEDURES
OF
THE BOARD FOR
CORRECTION OF NAVAL RECORDS

ESTABLISHED TO REVIEW NAVAL RECORDS
PURSUANT TO SECTION 207 OF THE
LEGISLATIVE REORGANIZATION ACT OF 1946, AS AMENDED

6-7-55

NAVEXOS P-473 (REV. ~~9-29-52~~)

395

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PROCEDURES

Section I. GENERAL PROVISIONS
1. Purpose
2. Authority

II. ESTABLISHMENT, FUNCTION AND JURISDICTION OF THE BOARD
1. Establishment and Composition
2. Function
3. Jurisdiction

III. APPLICATION FOR CORRECTION
1. General Requirements
2. Time Limit for Filing Application
3. Exhaustion of Other Remedies
4. Other Proceedings not Stayed
5. Denial of Application

IV. ENTITLEMENT TO HEARING; NOTICE; COUNSEL; WITNESSES; ACCESS TO RECORDS
1. Entitlement to Hearing
2. Notice
3. Counsel, Definitions of
4. Witnesses
5. Access to Records

V. HEARING
1. Convening of Board
2. Conduct of Hearing
3. Continuance

VI. ACTION BY THE BOARD
1. Deliberations, Findings, Decisions, and Recommendations
2. Minority Report
3. Record of Proceedings
4. Withdrawal

VII. ACTION BY THE SECRETARY

VIII. STAFF ACTION

IX. RECONSIDERATION

X. SETTLEMENT OF CLAIMS
1. Authority
2. Application for Settlement
3. Settlement
4. Report of Settlement

XI. MISCELLANEOUS
1. Staff Assistance
2. Expenses
3. Changes in Procedures
4. Publication in the Federal Register

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I. GENERAL PROVISIONS

1. Purpose

These regulations establish procedures for making application, and the consideration of applications, for the correction of Navy and Marine Corps records (hereinafter referred to as naval records) by the Secretary of the Navy acting through the Board for Correction of Naval Records (hereinafter referred to as the Board).

2. Authority

Section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 831) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended. (65 Stat. 655), provides:

(a) The Secretaries of the Army, Navy, and Air Force and the Secretary of the Treasury (with respect to the Coast Guard), respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective Departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or remove an injustice, and corrections so made shall be final and conclusive on all officers of the Government except when procured by means of fraud: Provided, That procedures set up by the Secretaries of the Army, Navy, and Air Force in accordance with this subsection shall be approved by the Secretary of Defense: Provided further, That no corrective action shall be taken under this subsection unless the request therefor be filed by claimant, his heirs at law, or legal representatives within three years after his or their discovery of the alleged error or injustice, or within ten years after the date of enactment of this Act, whichever be the later: Provided further, That the failure to file the request by claimant, his heirs at law, or legal representative, within three years after his or their discovery of the alleged error or injustice may be excused by such board of civilian officers or employees of the respective Departments upon finding by it that it is in the interest of justice to excuse such failure to file within the prescribed time in which event action shall be taken in the same manner as if the request had been filed within the three years as prescribed herein.

(b) The Department concerned is authorized to pay, out of applicable current appropriations, claims of any persons, their heirs at law or legal representatives as hereinafter provided, of amounts paid as fines, forfeitures, or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits, as

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the case may be, which are found to be due on account of military or naval service as a result of the action heretofore taken pursuant to section 207 of the Legislative Reorganization Act of 1946, or hereafter taken pursuant to subsection (a) of this section: Provided, That in the case of deceased persons where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due hereunder shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence or succession as may be prescribed by the applicable provisions of law relating to the kind of payment involved and when not otherwise so provided, in the order of precedence as set forth in the Act of February 25, 1946 (60 Stat. 30), or as may be prescribed by the applicable provisions of law relating to the kind of payment involved.

(1) This subsection shall not be deemed to authorize the payment of any claim heretofore compensated by Congress through enactment of a private law.

(c) The acceptance by the claimant of any settlement made pursuant to subsection (b) of this section shall constitute a complete release by the claimant of any claim against the United States on account of such correction of record.

(d) Applicable current appropriations shall be available for payment of such sums as may be due for continuing the pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits to persons who shall have received payment pursuant to the provisions of subsection (b) of this section and who may be entitled to such continuing payments as a result of the correction of their military or naval records: Provided, That continuing payments are authorized to be made to such personnel for not more than one year following the date of the correction or one year following the date of enactment of this Act, whichever be the later, without the necessity of reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached, and such reenlistments, appointments, and reappointments are hereby authorized by the Secretary concerned without regard to other qualifications.

(e) The Secretary of Defense and the Secretary of the Treasury, for their respective Departments, shall make semi-annual reports to the Congress of all claims paid under this subsection during the period covered by each such report. Each such report shall include, with respect to each such claim, a statement of the amount paid, to whom, and a brief description of the claim.

(f) Nothing in this Act shall be construed to authorize the payment of any amount as compensation for any benefit to which the claimant might subsequently become entitled

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under the laws and regulations administered by the Administrator of Veterans' Affairs.

II. ESTABLISHMENT, FUNCTION AND JURISDICTION OF THE BOARD

1. Establishment and Composition

(a) Pursuant to the provisions of Section 20 ' of the Legislative Reorganization Act of 1946, as amended, the Board for Correction of Naval Records is established in the Office of the Secretary of the Navy.

(b) The Board will consist of civilian officers or employees of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary of the Navy. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as the Chairman. In the event of absence or incapacity of the Chairman, an Acting Chairman chosen by the Board shall act as Chairman for all purposes.

2. Function

The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice and to make appropriate recommendations to the Secretary of the Navy.

3. Jurisdiction

The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

III. APPLICATION FOR CORRECTION

1. General Requirements

(a) The application for correction should be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or exact facsimile thereof, and should be addressed to: The Secretary of the Navy (Board for Correction of Naval Records), Washington 25, D. C. Forms and explanatory matter may be obtained from: Board for Correction of Naval Records, Navy Department, Washington 25, D. C.

(b) Except as provided in sub-paragraph ( ) below, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements permitted in the application are made with full knowledge of the

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penalty provided by law for making a false statement or claim. (Title 18, U. S. Code, Secs. 287, 1001).

(c) When the record in question is that of a person who is incapable of making application himself, or whose whereabouts is unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made (except where compliance with the provisions of the law with respect to time limitations for filing an application may require otherwise) by such person as the Board shall determine to be competent and suitable and to have a proper interest therein, including but not limited to, a spouse, a parent, or relative. Such proof of suitability and proper interest shall be submitted as may be required by the Board.

2. Time Limit for Filing Application

The claimant, his heirs at law, or legal representatives, must file a request for correction of a record with the Secretary of the Navy prior to October 25, 1961, or within three years of discovery of the alleged error or injustice, whichever be the later. The failure to file such request within the time prescribed may be excused by the Board on its finding that it is in the interest of justice to do so.

3. Exhaustion of Other Remedies

No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

4. Other Proceedings not Stayed

The application to the Board for correction of a record shall not operate as a stay of any proceedings being taken with respect to the person involved.

5. Review of Application

Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him. In connection with any application which it considers, the Board may recommend to the Secretary that the records be corrected, as requested by the applicant, without a hearing. The Board may deny an application if it determines that insufficient evidence has been presented to indicate probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him, or that effective relief cannot be granted. The Board will not deny an application on the sole ground that the record or records involved were made by or by direction of the President or the Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. If the application is denied, the applicant will be advised of the denial and that he is privileged to submit new and material evidence for consideration.

IV. GENERAL; NOTICE; COUNSEL; WITNESSES; ACCESS TO RECORDS

1. General

In each case in which a hearing is authorized, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

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entitled to a hearing before the Board either in person or by counsel of his own selection or in person with counsel.

2. Notice

(a) In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least thirty days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

(b) Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with Par. V-2(b) of these regulations.

3. Counsel, Definition of

As used in these regulations, the term "counsel" will be construed to include members in good standing of the Federal Bar or the Bar of any State, accredited representatives of veterans organizations recognized by the Veterans Administration under Section 200 of the Act of June 29, 1936 (38 U.S.C. 101), and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

4. Witnesses

The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

5. Access to Records

(a) The applicant shall have access to such official records as are deemed necessary to an adequate presentation of his case. It will be the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he desires to present in support of his case.

(b) Classified or privileged matter shall not be disclosed or made available without express finding of the Chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure must be in accordance

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with law and departmental regulations concerning the security of classified material. When appropriate the applicant may be supplied only with a summary or extract of classified matter.

V. HEARING

1. Convening of Board

The Board will be convened at the call of the Chairman and will recess or adjourn at his order.

2. Conduct of Hearing

(a) The hearing shall be conducted by the Chairman, and shall be subject to his rulings so as to insure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(b) If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(c) If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with the provisions of sub-paragraph (b) above, or will make such other disposition of the case as is indicated under the circumstances.

(d) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

3. Continuance

The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

VI. ACTION BY THE BOARD

1. Deliberations, Findings, Decisions, and Recommendations

(a) Only members of the Board and its staff shall be present during the deliberations of the Board.

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(b) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(c) Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(d) Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Navy as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication.

2. Minority Report

In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

3. Record of Proceedings

When the Board has completed its proceedings, a record thereof shall be prepared. Such record shall indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record shall include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, decision and recommendations of the Board and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

4. Withdrawal

The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Navy.

VII. ACTION BY THE SECRETARY

The record of proceedings of the Board will be forwarded to the Secretary of the Navy who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary.

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VIII. STAFF ACTION

1. Upon final action by the Secretary of the Navy, the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the decision previously submitted and approved by the Secretary of the Navy to the proper naval authority for appropriate action.

2. The addressees of such decisions shall report compliance therewith to the Chairman of the Board.

3. The Board shall transmit a copy of the record of proceedings to the proper naval authority for filing in the service record of the subject of the application except where the effect of such action would be to nullify the relief granted. In such cases no reference to the Board's decision shall be made in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and by it retained in a confidential file maintained for the purpose. Access to such file shall be had only upon written order of the Secretary of the Navy.

4. Upon receipt of the record of proceedings after final action by the Secretary of the Navy, the Board shall communicate the decision to the applicant and his counsel, if any.

5. The applicant shall not be entitled to copies of the record of proceedings, but such record shall be made available for his inspection except where, in the discretion of the Chairman, it is detrimental to the public interest.

IX. RECONSIDERATION

After final adjudication further hearing before the Board will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Navy

X. SETTLEMENT OF CLAIMS

1. Authority

(a) The Department of the Navy is authorized to settle and pay claims for amounts paid as fines or forfeitures or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits as the case may be which are found to be due, under applicable provisions of law, on account of naval service, and as the result of action heretofore or hereafter taken under section 204 of the Legislative Reorganization Act of 1946, as amended, except as provided in subparagraph (b) below.

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(b) The Department of the Navy is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

2. Application for Settlement

(a) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(b) In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence or succession as may be prescribed by the applicable provisions of law relating to the kind of payment involved and when not otherwise so provided, in the order of precedence as set forth in the Act of February 25, 1946 (60 Stat. 30), or as may be prescribed by the applicable provisions of law relating to the kind of payment involved.

(c) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

3. Settlement

(a) Settlement of claims shall be upon the basis of the decision and recommendations of the Board, as approved by the Secretary of the Navy. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from naval service.

(b) Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the disbursing activity as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

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4. Report of Settlement

(a) In every case where payment is made, the amount of such payment and the names of the payee or payees, shall be reported to the Chairman of the Board.

(b) The Chairman of the Board shall make a semi-annual report to the Secretary of the Navy of all claims paid during the period covered by the report, including a statement of the amount paid, the names of the payee or payees and a brief description of the claim in each case.

XI. MISCELLANEOUS

1. Staff Assistance

The facilities of all bureaus, offices and boards of the Navy Department shall be made available to the Board to assist it in the performance of its function.

2. Expenses

No expenses of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf, will be paid by the Government.

3. Changes in Procedures

The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Navy and of the Secretary of Defense.

4. Publication in the Federal Register

These regulations and any amendments thereto will be published in the Federal Register.

Approved: 23 September 1952
FRANCIS P. WHITEHAIR
Acting Secretary of the Navy

Approved: 20 September 1952
WILLIAM C. FOSTER
Acting Secretary of Defense

Revised 7 June 1955
Deputy Sec. Def.

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON

11 AUG 1954

From: The Secretary of the Navy
To: Chairman, Board for Correction of Naval Records

Subj: Standards and policies for the guidance of the Board for Correction of Naval Records.

Encl: (1) Standards and policies applicable to particular classes of cases

1. The complete absence of a declaration of Congressional policy and standards in section 207 of the Legislative Reorganization Act of 1946, as amended (65 Stat. 655; 5 U.S.C. 191a) gives rise to many problems in the administration of that section. The necessity for the exercise of discretion by both the Secretary of the Navy and the Board requires a considerable degree of liaison and uniformity of thinking by both. Past experience has demonstrated the inadequacy of such liaison on a case basis. It is my belief that enclosure (1), which contains standards and policies by which I govern or expect to govern my action on classes of cases which have been the most troublesome, will facilitate the functioning of the Board, place its operation on a more consistent basis and more completely carry out the intent of Congress in enacting section 207.

2. It is realized that any attempt to set forth detailed and concise instructions or policies is neither practicable nor desirable. The standards and policies forwarded herewith are intended as a general guide for the Board and must not be considered to be a bar to the Board's hearing any particular case or recommending relief in an unusual or particularly harsh case even though such relief may appear to be at variance with any policies stated therein.

3. In any one of the classes of cases commented on in enclosure (1), as well as all other cases considered by the Board, there is a basic presumption that the administrative action complained of by the petitioner was and is correct. The petitioner must bear the burden of presenting evidence which the Board considers sufficient, in quantity and quality, to rebut the presumption. Any information which is revealed by the petitioner's record is proper for consideration as having been presented by the petitioner and the whole case may, in some instances, be decided from the records alone. The presumption of correctness and the burden of proof must, however, be carefully regarded by the Board and any element of doubt in the proof presented should normally be resolved against the petitioner.

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4. Another important factor in every case is the necessity of the Board's presenting detailed findings of facts, both basic and ultimate. The Secretary of the Navy must have available to him all of the material facts in any particular case in order that he may determine whether or not a correction of a record is warranted. The Board's functions necessarily include the determination of all material facts. Its record will be of little help to the Secretary in exercising his discretion under section 207, if it presents only conclusions or findings of ultimate or final facts. For the same reason the Secretary should be presented with the evidence or a summary of the evidence in order that he may determine whether the findings of fact are supported by the evidence. The Board may follow any procedure it desires in presenting the evidence, including forwarding the examiner's brief, so long as it includes all material evidence.

5. The Secretary of the Navy, like the Board, normally experiences little difficulty in determining cases in which there has been an "error." The standards and policies in enclosure (1) are applicable to cases of "error" but are expected to be of the maximum assistance in cases of "injustice" or the indefinable area between "error" and "injustice."

/s/ J. H. Smith, Jr.

J. H. SMITH, Jr.
Assistant Secretary of the Navy for Air

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CASES INVOLVING DETERMINATION OF QUALIFICATION FOR A PARTICULAR TYPE OF DUTY

1. The Secretary of the Navy recognizes that the Board members do not have the technical training or competence to determine whether or not a person is qualified for particular types of duty, such as, submarines, naval aviation, etc. It is not practicable to change the membership of the Board to provide the required technical training and competence for such cases. It is apparent, therefore, that the Board should not recommend a correction which would be, in effect, an initial determination for a particular duty. Nor should it recommend any correction which if approved, would affirmatively indicate present qualification for a particular duty. No objection can be perceived, however, in an appropriate case, to the Board's correcting a record to remove a previous disqualification from a particular duty. The effect of such a correction, if made, would be to place the petitioner in a status quo as of the time of the error or injustice and would not disturb existing administrative processes concerning present qualifications.

2. The Secretary of the Navy considers that the Board should not have any difficulty in correcting records in cases of this class when there has been a demonstrable error such as, for example, mistaken identity or material non-compliance with pertinent regulations. In a case involving an alleged injustice, it would appear that the Board's corrective action should be limited to those cases in which the administrative action of which petitioner complains was capricious, arbitrary, malicious, unreasonable or wholly without foundation in fact. In a case in which the action of disqualification is apparently a proper exercise of discretion and has a basis in fact, it should not be disturbed even though the Board may not agree with the action taken. In this class of cases, for the information and assistance of the Board, testimony may be obtained from expert witnesses skilled in the particular duty in question.

Enclosure (1) A

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CASES WHERE FILING OF THE BOARD'S FINDINGS AND ACTION BY THE SECRETARY IN A PERSON'S OFFICIAL RECORD COULD BE PREJUDICAL

1. The Procedures of the Board for Correction of Naval Records (Navexos) P-473 (Rev.9-29-52) provide that the record of proceedings shall be placed in the service record of the petitioner unless such filing would nullify the relief granted, in which case no reference to the Board's decision shall be made in the petitioner's service record. It is apparent that the regulation is more appropriate to cases in which relief is granted but it may work an inordinate hardship on the petitioner in some cases in which relief is not granted. Section 207 of the Legislative Reorganization Act of 1946 was enacted to provide relief from error or injustice and it should not be administered in such a manner as to create or aggravate an error or injustice. The existing regulations recognize that filing the record of proceedings in a service record may nullify a correction but in the preparation of the regulations, it was apparently not considered that filing the record of proceedings in a service record could have any prejudical effect when relief is not granted. The Board may, therefore, in addition to considering the subject matter of petitioner's allegations, inquire into the independent question of the effect of placing the record of proceedings of a case in which relief is denied in the petitioner's service record. If it should be determined that the filing of the proceedings in petitioner's service record will constitute an additional injustice the Board may specifically recommend to the Secretary of the Navy that the proceedings not be filed in the petitioner's service record. Such action should not be taken on mere conjecture that the petitioner may be damaged by the Board's action but only when it reasonably appears that penalty or prejudice will arise as a result of an application to the Board, either successful or unsuccessful.

Enclosure (1) B

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CASES INVOLVING PHYSICAL REMOVAL OF MATTER FROM OFFICIAL RECORD

1. In cases of this nature, it is again emphasized that the presumption must ever be that the record as it stands is correct. Complete physical removal of matter, or partial elimination by obliteration of certain entries or remarks, should be recommended only upon presentation of strong and compelling evidence that prejudical error or injustice exists which cannot be remedied by any other action.

2. Consideration should be given by the Board to the possible harmful effect on Petitioner or complete removal of matter from an official record. This is particularly so where an unexplained chronological gap, as for instance in fitness reports of an officer; in the service record of an enlisted man; or in a medical record, would result. In many cases, having in mind the practical accomplishment in the most effective manner of the nature of the relief decided upon, it would appear that the interests of the petitioner might well best be served by retaining of record the original matter complained of, and by supplementing it with such additional pertinent information and conclusions as are warranted by the facts presented to the Board. In other cases wherein physical removal is deemed to be demanded, the Board may recommend that an otherwise unexplained deficiency in the record be supplied by an appropriate memorandum indicating the correction of the record.

3. Letters of censure should be considered in accordance with the foregoing general principles in determining whether or not physical removal is justified. In a case involving a letter of censure which has been cancelled by the issuing authority, however, one additional fact may be considered. The Board should examine carefully the letter of cancellation to determine whether it effectively nullifies the issuance of the letter of censure. If it does not do so, the Board should recommend that the record either be corrected in a manner which will nullify the effect of the letter of censure or that both the letter of censure and letter of cancellation be physically removed, whichever is deemed the more appropriate.

4. In cases involving trial by court-martial, whether resulting in conviction or acquittal, I would be inclined to the view that only a copy of the promulgating orders should be retained in an officer's selection board jacket.

Enclosure (1) C

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CASES INVOLVING ADJUSTMENT OF LINEAL PRECEDENCE AND APPOINTMENT TO A HIGHER GRADE OR RANK

1. Adjustment of lineal precedence and promotion, from the standpoint of correcting records, are very closely connected. It would appear more appropriate, however, for the Board to consider each as a separate question, combining both in one correction if necessary.

2. The Judge Advocate General has held that, since the enactment of the Officer Personnel Act of 1947, once lineal position has been established in accordance with the applicable laws and regulations in existence at the time of its establishment, it becomes final (JAG:II:GSS:mjc of 30 Aug 1948). In considering the authority of the Secretary of the Navy acting through the Board for Correction of Naval Records, however, the Judge Advocate General has recognized two exceptions to the rule of finality of lineal precedence, as follows:

(a) Lineal precedence may be adjusted in a case in which the assigned position was incorrectly established due to an error, or

(b) There was a manifest injustice in the determination of assigned lineal position. (JAG:II:1:LMH:imz of 1 Oct 1952).

In both cases, it may properly be considered that the assigned lineal position was not fixed in accordance with then existing law and regulations.

3. The Board should have little difficulty in determining the propriety of an adjustment of lineal precedence in a case in which there was an error in fixing the assigned position. If there was an actual error, such as mistake in names or dates or either non-compliance or incomplete compliance with pertinent laws or regulations, and the error resulted in any change from the correct lineal precedence which should have been assigned, the Board should recommend an adjustment.

4. In cases involving adjustment of lineal precedence in which the lineal position was fixed subsequent to the effective date of the Officer Personnel Act of 1947, there appears to be so little possibility of an injustice, as opposed to error, that no guidance from the Secretary should be required. The initial determination of precedence of officers who were on active duty on the effective date of that Act was based on the lineal list as it was then constituted and there was undoubtedly opportunity for injustices to occur during and after World War II. The rapidity of advancement under the temporary promotion system necessitated by World War II could and did result in abnormal displacement of lineal position in a number of cases. The failure to promote a particular officer for a relatively short period of time for any of a variety of reasons could result in his being passed by hundreds of officers formerly junior to him. The Board is reminded that the Navy and Marine Corps were aware of the probability that inequities [illegible]

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resulted from the wartime promotion system and convened boards to correct any manifest injustice which may have been incurred in the administration of the temporary promotion laws and regulations (SecNav precept of 25 A 1947 to RADM Jones, USN; SecNav precept of 14 July 1947 to MAJGEN Watson, USMC). The jurisdiction of these boards was limited, however, to officers who had once failed of selection; therefore no review for injustice has included the cases of all officers. It is considered, however, that if a particular officer's case was reviewed by either the "Jones Board" or the "Watson Board," that is a material fact which must be considered by the Board for Correction of Naval Records. It is further pointed out that the presumption of correctness attaches to the action of these boards in the matter of the relief of an injustice.

5. In cases of adjustment of lineal precedence, as in most BCNR cases, it is extremely difficult to give any precise definition of injustice. Personnel management, like all other aspects of military affairs, is, in time of war or emergency, dedicated primarily to the matter of attaining and maintaining the maximum combat effectiveness, which may result in instances of harsh treatment of individuals or classes of persons. In determining whether or not any particular officer suffered an injustice, the Board should attempt to ascertain the nature of the treatment afforded other officers under similar circumstances. If the same treatment, which now, in retrospect, seems harsh, was the general rule in similar cases, it is my opinion that such treatment should not be determined to be an injustice for purposes of correcting a record. Such a determination would normally be proper only when a particular individual was treated differently than were others in the same circumstances.

6. The Board's actions in corrections which involve promotion of an officer to a higher rank may be divided, for the sake of convenience, into two categories, namely:

(a) Promotions which the Board believes should have been effected during World War II and the postwar demobilization period pursuant to the Act of July 24, 1941 (34 U. S. C. 350 et seq.).

(b) Promotions which the Board believes should have been effected subsequent to the enactment of the Officer Personnel Act of 1947 and pursuant to either that Act or the Act of July 24, 1941. The Act of July 24, 1941 authorizes promotions only in cases of officers on active duty. In any case in which a petitioner seeks a retroactive promotion under that Act, prior to its amendment on June 30, 1951 (65 Stat. 109; 34 U. S. C. 350d), the Board should recommend that the record be corrected to show the appointment had been made if it finds that the petitioner was on active duty and met all the requirements for promotion at the time the Board finds it should have been effected.

7. Since the 1951 amendment to the Act of July 24, 1941, both statutory promotion systems in use in the Navy and Marine Corps require selection

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a promotion board for advancement above the grades of lieutenant (junior grade) and first lieutenant. The Officer Personnel Act of 1947 has considerably more details on the selection system than the 1951 Act but both have one thing in common, namely, that selection by a board of Navy or Marine officers is an absolute prerequisite to such promotion. Section 207, supra, requires that BCNR be composed of civilians; therefore it is apparent that it cannot perform the statutory function of finding an officer "qualified," "fully qualified," or "best fitted" for promotion to a higher grade. In acting on a petition in which the Board feels that an officer, who was eligible for consideration by a selection board, was through error or injustice, not considered or not selected, it should defer any action beyond that required to correct the error or injustice, until the officer's corrected record has been considered by a selection board. If the first selection board which thereafter considers the officer's corrected record recommends him for promotion, the BCNR may recommend that his record be further corrected, if the facts warrant, to show that the promotion was effected at an earlier date when the Board believes it should have been effected. PROVIDED, that in event the officer's corrected record places him in a lineal position either among or senior to any officers who were "failed of selection" by the previous board, the name of the officer whose record has been corrected will be clearly marked to indicate he was erroneously not considered by the previous board or boards. Should the officer, on the basis of his corrected record, fail of selection the first time he is thereafter considered but is subsequently selected, the BCNR should normally limit any further correction it deems warranted to adjustment of lineal precedence within the group with which he was actually promoted.

8. The foregoing principles apply equally to all officers both Regular and Reserve, including both line and staff corps.

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BASES OF REMOVAL OF THE MARK OF DESERTION

1. Putting the mark of desertion on a man's record does not mean that he is a deserter nor does it mean that the accusation of desertion is formally made against him. The mark is placed in a man's record when he has been an unauthorized absentee for 30 days or for a period of less than 30 days and his intention to desert or not to return is manifest (Art C-7806, BuPers Manual; para. 15051, MarCorps Manual). The mark of desertion is entered in the service record primarily for administrative convenience and personnel accounting purposes. It is recognized that an error may have been committed in placing the mark of desertion on a man's record but, in arriving at a determination of injustice the Board must keep in mind that the man himself, independently of any action of the Navy Department, performed an act which resulted in the entry of that mark.

2. Existing regulations provide for the removal of the Mark of desertion when the man has been acquitted after trial for his absence or has been convicted of the offense of unauthorized absence (Art. C-7809, Bureau of Naval Personnel Manual, para. 15064, Marine Corps Manual). The Bureau of Naval Personnel Manual states two other circumstances in which the mark of desertion may be removed namely:

(a) where there is a determination by a board of medical survey that the individual was mentally incompetent at the time his absence commenced, or

(b) where the record shows that the individual was under military control at the time the mark was entered (Art C-7809, BuPers Manual). The foregoing circumstances are not set forth in the Marine Corps Manual as justifying the removal of the mark of desertion but the Board may consider such circumstances in determining injustice.

3. The regulations authorizing the removal of the mark of desertion are all predicated on an absence in which there is no proof of intent to desert. In the normal operation of the regulations, removal is authorized in those cases in which the individual is returned to naval jurisdiction, is tried for his offense and the Navy has not met the burden of proof of intent to desert. In view of the presumption of correctness of administrative action which is effective in all BCNR cases, it is considered proper that the petitioner must bear the burden of affirmatively demonstrating that there was no intent to desert. In any case, therefore, in which the Board finds that the petitioner has met his burden of proof and that there was no intent to desert, the Board should recommend that the mark of desertion be removed. The same result should be reached if the Board finds that the petitioner did not have the mental capacity to have the intent to desert.

4. There is one aspect of the removal of the mark of desertion which may prove troublesome to the Board because it is not specifically within the purview of the pertinent regulations. Such cases occur when the individual is convicted of the charge of desertion and the finding of the court is set aside or when, for some reason it was decided not to try the petitioner

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by court martial for the unauthorized absence. In such cases it would appear that the ends of justice would be adequately served by requiring the petitioner in such cases to bear the burden of proof by satisfying the Board that he had no intent to desert. It is also considered that in cases coming within the scope of the circumstances stated in paragraph 2 (b) herein, the fact that petitioner was in military custody at the time the mark was entered in his record has no direct bearing on whether or not he intended to desert nor is it a direct indication that, had he not been in custody, his actions would have been such that the mark would not have been entered. In such cases it is also considered that the ends of justice will be adequately served by requiring petitioner to bear the burden of proof that he did not intend to desert.

5. The past experience of the Board has indicated the desirability of guidance in cases where a next-of-kin petitioner has requested both the removal of the mark of desertion and a determination of death due to an unexplained absence. In such cases, a determination of death at some time during a seven year period of unexplained absence will not, in itself, justify a removal of the mark of desertion. However, the evidence, if any, which tends to prove that the absence was unexplained and the lengthy period of unexplained absence itself are both material to proof of lack of intent to desert and should be so considered by the Board.

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CASES INVOLVING DETERMINATION OF DEATH DUE TO UNEXPLAINED ABSENCE

1. In cases involving a determination of death due to an unexplained absence, the Board may be required to decide that a person died during a period of absence or died on a particular date during a period of unexplained absence. The law on such cases is well established but is, in many instances, difficult in its application.

2. An opinion of the Judge Advocate General states the applicable law as follows:

"It is also a well known rule of law that a person shown not to have been heard of for seven years by those who, if he had been alive, would naturally have heard of him, is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death (Davie v. Briggs, 97 U.S. 628; Fidelity Mut. Life Assd. v. Mettler, 185 U.S. 308; U. S. v. Hayman, 62 Fed2d 118; Salmon Bay Sand & Gravel Co. v. Marshall, 93 Fed2d 1). * * * The question arises, however, as to whether there are any facts tending to establish that he died at any particular time within the seven year period. The rule in such a case is that if it appears in evidence that the absent person, within the seven years, encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life, the inference may be drawn that life ceased before the expiration of seven years." (JAG:II:1:RLB:imz of 29 Oct 1953)

It will be noted that while evidence which is primarily negative in character may be sufficient to establish a presumption of death at an undetermined date during the seven year period, substantial affirmative evidence is necessary to support a determination that death occurred at a particular time.

3. The Board should have little difficulty in a case which requires a determination of death during a period of unexplained absence. Care should be taken, however, that in a case in which the Board's determination is that death occurred on a particular date, it should also make a finding of a specific peril or impending or immediate danger which might reasonably be expected to destroy life. The Board may be confronted with a case of unexplained absence during which a man has been considered a deserter and in which petitioner presents ample, convincing evidence of lack of intent to desert. Such evidence may be so strong as to leave no reasonable inference but that death was the reason for the unexplained absence. In such a case, however, unless there is also evidence of a specific peril, no finding of death on a particular date would be warranted.

4. No attempt can be made to categorize the types of perils which may lead to a conclusion of death on a particular date. Comment on one type of peril which may reasonably be expected in the naval service may, however, be of assistance to the Board. Service in the Navy may result in

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a man's being lost or cast away at places or under circumstances where the best medical opinion and professional experience other than medical is that life cannot exist beyond a stated time. Examples of such cases would be a plane crash on the polar ice or lost at sea in the winter in the north Atlantic or Pacific Oceans. The Board may in such cases find that death occurred on the last day it believes that the man could have survived, providing there is no evidence of the individual himself having survived beyond that date.

5. Some guidance in the preparation of a correction may be of assistance to the Board. It is considered that a correction to indicate death during a seven year period of unexplained absence should not open any improper avenue for the next of kin to claim active duty pay and allowances. To preclude such a claim, the Board should find as a fact, and include in the correction, a statement of the latest date on which it is determined that the deceased performed any active duty. It is further considered that, in an appropriate case, the next of kin should be entitled to receive the death gratuity. To insure such entitlement, unless the Board is convinced by affirmative evidence that the deceased met his death as a result of his own misconduct, the correction should specifically state that the death was not the result of the member's own misconduct. If the Board finds that the deceased was in a line of duty status at the time of the commencement of the unexplained absence, the Board may consider that the circumstances of the deceased's disappearance makes his absence excusable. In such a case the Board should find that the absence is excused and that the death was in the line of duty.

Enclosure (1)F

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CASES INVOLVING A PUNITIVE DISCHARGE ISSUED PURSUANT TO A SENTENCE OF COURT-MARTIAL

1. The correction of a naval record in which the petitioner alleges an error or injustice in connection with a punitive discharge issued pursuant to a sentence of court martial is particularly troublesome. In dealing with such cases the Board may well face a conflict with the jurisdiction of military courts. The law has traditionally recognized such jurisdiction as being exclusive in its proper field and the judgments of military courts have long been recognized as final and conclusive.

2. To understand fully the difficulties of such corrections the nature and effect of a punitive discharge must be fully considered. The most serious punitive aspect of such a discharge arises from its continuing effect on the later life of the individual. It should be realized therefore that the prejudicial result on an individual's later life after separation from the naval service is exactly what Congress intended when it authorized naval courts to award a punitive discharge. It must be further recognized that there are many benefits, both tangible and intangible, which flow from an honorable separation from the naval service and it is obvious that Congress intended that a punitive discharge should forever bar some or all of those benefits to persons whose conduct warranted such a discharge.

3. No statute law can be found which tends to diminish the finality and conclusiveness of an executed sentence of punitive discharge. Congress, by the enactment of the Servicemen's Readjustment Act of 1944 established policy and procedure for relaxing the effect of a punitive discharge upon entitlement to veteran's benefits. Sections 300 and 301 of the Servicemen's Readjustment Act of 1944 (38 U. S. C. 693g & h), however, specifically except from the relaxed policies punitive discharges by reason of a sentence of general court-martial unless the former member was insane at the time of the commission of the offense. In view of the Congressional policy evidenced by the enactment of sections 300 and 301, and to effect the purpose for which Congress enacted section 207 of the Legislative Reorganization Act of 1946, as amended, namely, to provide a substitute for private bills, the Attorney General of the United States concluded that section 207 must be considered "applicable to cases in which former servicemen have received discharges or dismissals by reason of a sentence of a general court-martial." (40 Op. Atty. Gen. 504, 506) He further concluded, that, although not specifically provided for in section 207, the power to issue a new discharge must be implied.

4. In order to support a recommendation that a record should be corrected in a case involving a punitive discharge by reason of a sentence of general court-martial, the Board must find an actual error or injustice and should not base its recommendation purely on clemency. The Board must exercise care that the nature of the error or injustice, as found, does not infringe

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on the finality and conclusiveness of the proceedings, findings and sentence of the court martial. These instructions are not intended to prevent the Board from determining, however, that, based on findings of material facts, the failure of the Secretary of the Navy to use his general clemency powers, which were provided in both previous and present law, constituted an injustice.

5. It is recognized that the Board will be faced with the problem of whether or not to consider evidence of petitioner's exemplary conduct in civil life subsequent to his discharge and, if considered, what weight to give such evidence. Such evidence bears on matters which are not part of a naval record and do not necessarily have any bearing on naval service or record and would, therefore, normally not be considered by the Board. In cases involving a punitive discharge, however, the petitioner's character is a material factor in determining whether or not the failure to have exercised clemency in connection with his court-martial sentence was an injustice. The petitioner's conduct in civil life may well be important evidence as to his character while in the naval service and may be received and considered by the Board for that purpose. It does not appear, however, that in the usual case evidence of conduct in civil life after discharge, regardless of how exemplary that conduct may have been, will in the absence of any other evidence, support a finding of injustice.

6. Summarizing the foregoing, the Board may process cases involving the correction of a punitive discharge issued by reason of a sentence of a general court-martial. If it is determined that an error or injustice exists which does not infringe on the finality and conclusiveness of the proceedings, finding and sentence of the general court-martial, a correction should be recommended. The Board should keep in mind that the punitive nature of a dishonorable or bad-conduct discharge arises primarily as a result of its life-long effect on the individual and such effect should not be disturbed in any but the most deserving cases. In connection with the phraseology of a correction, the Board must remember that the sentence of a punitive discharge and its execution are part of the court-martial and, while record entries and certificates of that execution may be changed, the Board should rarely, if ever, recommend that all indication of the nature of petitioner's discharge be physically removed from the record.

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CASES INVOLVING PHYSICAL DISABILITY RETIREMENT

1. The Secretary desires that, for procedural purposes, cases involving physical disability retirement shall be separated into those arising under retirement laws in effect prior to 1 October 1949, the effective date of the Career Compensation Act, and those arising on or after that date. Petitioner's record should be corrected if the Board should find:

(a) that Petitioner became incapacitated for service by reason of physical disability incurred in the line of duty within the provisions of law in effect prior to 1 October 1949 or that he became unfit to perform his duties by reason of physical disability within the provisions of the Career Compensation Act.

(b) that his incapacitation or unfitness created eligibility to be placed on the retired list or to receive retired pay under the laws then applicable, and

(c) that petitioner was not granted the retirement, retired pay, or disability severance pay for which he was eligible under then existing law. The Board shall notice decisions of the Comptroller General of the United States which require that a petitioner's record, as corrected under the circumstances, must contain a factual situation which will support entitlement to retirement, retired pay or severance pay under then existing law.

2. Prior to the effective date of the Career Compensation Act of 1949 several different laws authorized retirement of officers who were found incapacitated for service by reason of physical disability. The Secretary desires generally that such cases be processed liberally but the Board should not fail to give due regard to the basic legal presumption of correctness of records and the judicial rule that the burden of proof is upon the petitioner. The attention of the Board is invited to the fact that a limited class within these cases may be reviewed by Boards established pursuant to Section 302 of the Servicemen's Readjustment Act of 1944 (38 U. S. C. 693i) and that a petitioner may be required to first exhaust his remedy under that Section.

3. The Career Compensation Act of 1949 and current Navy Department regulations and procedures reduce the probability of error or injustice. The Secretary recognizes that in physical disability retirement there may well be differences of medical opinion in any case. Proper administrative procedures require that such matters as determination of eligibility for physical disability retirement and of percentage of disability must reach a stage of finality which the Board may recognize and beyond which normally it should not consider a correction to be justified. With more particularity, the Board should not consider a correction of record to be justified when:

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(a) All of the petitioner's medical symptoms and the results of all medical tests or examinations administered were known to medical officers while petitioner was entitled to receive basic pay.

(b) There is no indication that additional medical tests or examinations should have been made in petitioner's case which would have revealed his physical condition to be different from what it was determined to be.

(c) Petitioner, based upon all medical tests and examinations which were made, was afforded a full and fair hearing, as well as an opportunity to appeal, if appropriate, in complete compliance with the Career Compensation Act and Chapter IX, Naval Supplement to the Manual for Courts-Martial. As in retirement cases arising prior to the Career Compensation Act of 1949, a mere difference of medical opinion upon matters such as percentage of disability, providing there is no material difference in opinion on the basic facts of petitioner's physical condition, will not warrant a correction of a record.

4. The attention of the Board is invited to the fact that the Career Compensation Act created, on 1 October 1949, a temporary disability retirement status, which was a new concept in military retirement law. The temporary retired status enabled the Navy, in an appropriate case, to defer for a period of up to five years, the final determination of a member's entitlement, and consequently to give consideration to the changes, if any, in the member's physical condition. The Board may, in any case arising under the Career Compensation Act in which it finds that accepted medical principles indicate that petitioner's disability is of a permanent nature, correct the record in a manner which will show the petitioner's permanent status. It appears, however, that in most, if not all, of such cases, the Board may adequately grant relief from the error or injustice by correcting the record to show the petitioner's placement on the temporary disability retired list. The effect of such a correction will be to create an immediate entitlement to any retired pay provided by the Career Compensation Act which the Board determines petitioner should have received but the final determination of petitioner's fitness to perform duty, and entitlement, if any, to retirement, retired pay or severance pay will be made in accordance with, and under procedures established by, the Career Compensation Act.

Enclosure (1)H

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CASES INVOLVING INCONSEQUENTIAL ERROR

1. In other general categories of cases outlined in these instructions the more difficult problems were considered to be presented by injustice in the absence of error of record. This category envisions the opposite situation wherein unquestioned error of record exists, but without resulting injustice.

2. One plausible construction of Section 207 of the Legislative Reorganization Act of 1946, as amended, would require "correction" of any error demonstrated to exist in a record, notwithstanding harmlessness thereof. Such a construction is considered, however, to be contrary both to the express language of the statute, i.e., "where in their judgment such action is necessary to correct an error," and the obvious general intendment of the statute to create an extraordinary power of a broad discretionary equitable nature rather than a court of administrative appeals, and is expressly disavowed.

3. The general principle is therefore prescribed that recommended relief as respects error of record should not ordinarily extend beyond notation on the record of the nature of the error, unless the Board is satisfied that the error actually produced a false assumption as to a material factor in the case, or resulted in concealment of a fact or facts which, if known at the time, would in reasonable probability have resulted in substantially different action.

4. An example which may be cited is that of a wilful violation of or failure to comply with procedural requirements of the Uniform Code of Military Justice, the Manual for Courts Martial, Naval Supplement, Navy Regulations, Bureau or Marine Corps Manuals, instruction, or traditional custom. If the individual concerned does not further establish to the satisfaction of the Board his innocence in the premises he ordinarily merits no affirmative assistance, notwithstanding the fact that it may appear beyond dispute that the conduct in question would never have been detected in the absence of the error.

5. A qualification must be made to the principle outlined as regards a situation wherein a procedural violation legally invalidates action taken. To illustrate the distinction, the fact that an illegally procured confession has alone induced an individual to submit a voluntary resignation does not invalidate the resignation nor the separation from the service by acceptance thereof; however, if the submission of the resignation is not voluntary, the act is voidable, and separation from the service by acceptance thereof may be invalid unless the individual has effectively ratified. Or, if a statute, or administrative practice consistently followed in a particular class of cases, requires notice and opportunity for hearing prior to effecting a discharge or taking other administrative action, then failure to follow such requirement may vitiate the action,

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subject to exception under circumstances wherein the individual may be held to have waived the requirement; however, contentions of irregularities in a hearing held, such a bias of the hearing officer or denial of counsel, will normally be dealt with under the general principle of inconsequential error, outlined above.

6. In summary, the issues with which the Board should concern itself are: (1) Did the facts exist substantially as stated? not, were the facts regularly established? and, (2) Is the alleged irregularity one which removes an essential legal basis for the action taken? not, was the individual concerned accorded his "rights"?

Enclosure (1)I

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CASES IN WHICH COMMENTS OF BUREAUS AND OFFICES OF THE NAVY DEPARTMENT SHOULD BE FORWARDED WITH RECORD OF PROCEEDINGS

1. Section XI of the Procedures of the Board for Correction of Naval Records (NavExos P-473 (Rev. 9-29-52)) provides that the facilities of all bureaus, offices and boards of the Navy Department shall be made available to the Board to assist it in the performance of its function. The Board is not required to request bureau or office comment but is authorized to do so whenever it is felt that such comment is necessary or helpful to the Board. In any case, however, in which formal comment is furnished by a bureau or office, such comment is a material part of the record of proceedings and should be forwarded as such.

Enclosure (1)J

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ADMINISTRATIVE REGULATIONS AND PROCEDURES

GOVERNING THE NAVY DISCHARGE REVIEW BOARD

Date: _____

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TABLE OF CONTENTS

Section I

GENERAL PROVISIONS

	Paragraph
Authority	1
Jurisdiction	2

Section II

PROCEDURE

Request for Review	3
Review on Own Motion	4
Methods of Presenting Case	5
Counsel	6
Witnesses	7
Expenses	8
Notice of Hearing	9
Continuances	10
Failure of Petitioner to Appear	11
Evidence	12
Records	13
Withdrawal	14

Section III

ACTION BY THE BOARD

Deliberations	15
Findings of Facts	16
Conclusions	17
Decision	18
Order	19
Record of Proceedings	20

Section IV

REVIEW BY THE SECRETARY OF THE NAVY

Transmittal of Record	21
Action by the Secretary of the Navy	22

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Section V

THE PANEL

	Paragraph
Members	23
Changes in Membership	24
Meetings	25
Administrative Regulations	26
Duties of Panel Officers	27
(a) President	
(b) Secretary	

Section VI

THE BOARD

Members	28
Reporter	29
Time and Place of Meeting	30
Duties	31
(a) Board	
(b) Senior Member	
(c) Recorder	

Section VII

CORRESPONDENCE

Addressing of Requests	32

Appendix

Section 301, Servicemen's Readjustment Act of 1944, as amended.

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DEPARTMENT OF THE NAVY
Washington, D. C.

ADMINISTRATIVE REGULATIONS AND PROCEDURES GOVERNING THE NAVY DISCHARGE REVIEW BOARD

Section I

GENERAL PROVISIONS

1. AUTHORITY

The Secretary of the Navy is directed by Section 301 of the Servicemen's Readjustment Act of 1944, Public Law 346, Seventy-eighth Congress, to establish boards for the review of discharges and dismissals of former personnel of the Navy and Marine Corps. To carry out the duties imposed by this act, administrative regulations and procedures are hereby formulated.

2. JURISDICTION

(a) In accordance with the Secretary of the Navy's precept, the Navy Discharge Review Board, hereinafter known as the Board, has been established within the Department of the Navy to review, upon its own motion, or upon request by or on behalf of the individual former officer or enlisted man or woman, or if deceased, by the surviving spouse, next of kin or legal representative concerned, or if incompetent, by the guardian, the type and nature of discharge or dismissal certificate or other documentary evidence of discharge or dismissal of former members of the naval service, except a discharge or dismissal by reason of the sentence of a general court-martial. This jurisdiction is construed to include every separation from the naval service, irrespective of the manner evidenced or brought about, except separations by reason of the sentence of a general court-martial.

(b) The scope of the review shall be to determine whether under reasonable standards of naval law and discipline as defined in paragraphs 15(a)(4) and 18, the type and nature of the discharge or dismissal should be changed, corrected or modified, and, if so, to decide what change, correction, or modification should be made.

(c) The Board has no authority to revoke any discharge or dismissal, to reinstate any person in the military service subsequent to discharge or dismissal, or to recall any person to active duty. Nor does the Board have any authority to waive discharges to permit enlistment in the naval service or any other of the Armed Forces; to cancel enlistment

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contracts; to change, correct or modify any document other than the discharge document; to change the reason for discharge from [illegible] physical disability; or to determine eligibility for veterans' [illegible].

(d) The Board may, in its discretion, record a recommendation for reenlistment as a part of its decision in any case of which it has legally taken jurisdiction. Any recommendation for reenlistment so made by the Board shall not bind the Chief of Naval Personnel or the Commandant of the Marine Corps in the exercise of their respective administrative functions. Secretarial approval of a Board action will not constitute a Secretarial endorsement of the Board's recommendation for reenlistment unless expressly so stated, and it will under no circumstances be interpreted as a tacit directive that the petitioner in question be reenlisted.

(e) Section 301, Servicemen's Readjustment Act, provides for a review of the type and nature of a discharge or dismissal and further provides that the decision of the Board shall be final subject only to the review of the Secretary of the Navy. Accordingly, when the decision of the Board has been approved by the Secretary of the Navy the case has reached a finality and the Board has no authority to reopen the proceedings for further review, except that the Board may, in its discretion, when authorized by the Secretary of the Navy, reconsider and change the action originally taken upon the production of material, newly discovered evidence.

Section II

PROCEDURE

3. REQUEST FOR REVIEW

(a) The discharged person should submit a petition for a review to the Board, with the certificate of discharge or dismissal in question, if available, and such other statements or affidavits as he desires to present.

(b) When the request for review is submitted by a surviving spouse, next of kin, legal representative or guardian, satisfactory evidence of the required relationship must be submitted. If the discharged person is deceased or mentally incompetent, an affidavit containing a statement to that effect and a statement giving the identity of the authorized representative must accompany the petition. The petition must be signed by the authorized representative.

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(c) The petition or request for review of discharge should be submitted on Form DD 293 and signed by the discharged person unless the individual is deceased or mentally incompetent (See 3(b) above).

(d) No request for review of a discharge or dismissal shall be valid unless filed within 15 years after such discharge or dismissal or within 15 years after 22 June 1944, whichever be the later.

4. REVIEW ON ONE MOTION

(a) The Board shall not conduct a review on its own motion without first transmitting a written notice to the person concerned or, if such person is deceased, to his surviving spouse, next of kin, legal representative or guardian, by registered mail, return receipt requested.

(b) Such notice shall state that a review of the type and nature of this discharge or dismissal is to be held by the Board, and shall advise the addressee of his right to appear before the Board, in person or by counsel, and to present evidence before the Board in the manner herein prescribed.

5. METHODS OF PRESENTING CASE

The petitioner may present his case:

(1) By affidavits and/or other documents. (See par. 15(e)(3).)

(2) In person, with or without counsel.

(3) By counsel.

(4) Or by a combination of the above.

6. COUNSEL

The term "counsel", as used herein, shall include members of the bar in good standing and accredited representatives of veterans' organizations recognized by the Veterans' Administration under Section 300 of the Act of 29 June 1936 (Public Law 844, 74th Cong.) as amended.

7. WITNESSES

(a) The Board shall require that all testimony be given under oath or by affirmation.

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(b) Witnesses shall be subject to examination and/or cross-examination, as appropriate, by the members of the Board, the petitioner, or his counsel.

(c) The testimony of witnesses may be presented either in person or by affidavits.

(d) The Board has no authority to subpoena witnesses.

8. EXPENSES

No expenses of any nature whatsoever incurred by the petitioner, his counsel, his witnesses, or by any other person on his behalf, shall be paid by the government.

9. NOTICE OF HEARING

When a personal appearance is desired, the Board shall give a petitioner at least 30 days' written notice of the time and the place of the hearing. Such time shall be computed from the time of mailing of the notice. The petitioner may waive such time limit in writing and earlier hearing date may be set by the Secretary of the Panel.

10. CONTINUANCES

A continuance may be granted by the Board on its own motion, or at the request of the petitioner, or his counsel, when such continuance appears necessary in order to insure a full and fair hearing.

11. FAILURE OF PETITIONER TO APPEAR

A petitioner who requests a hearing and who, after being duly notified of the time and place of hearing, fails to appear at the appointed time, either in person or by counsel, and fails to make timely request for a continuance or for withdrawal of his petition, thereby waives his right to be present and cannot thereafter take exception to the findings or conclusions arrived at in his absence.

12. EVIDENCE

(a) The Board, in its review, shall consider as evidence all available records of the Department of the Navy together with such evidence as may be submitted by the petitioner and/or his counsel. Whenever, during a review, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed in the records of the Department of the Navy

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and in the testimony and other evidence before the Board, the Board may obtain such further evidence as it may consider essential to a fair and impartial understanding of the facts. Whenever it appears to the Board that professional or technical questions involved in a case under review are not adequately resolved in the records of the Department of the Navy, or whenever it appears that the advice of any bureau, office or administrative official in the Department of the Navy would be helpful in deciding the case, the indicated advice should be requested and obtained prior to final consideration and decision of the case by the Board. Such advisory material, if given orally, shall be transcribed and included in the record of proceedings. In requesting such advice, the Board may properly limit its inquiry to the specific points or questions upon which it desires advice. The Board is in no event bound by expressions of other administrative officials concerning the ultimate decision to be had on the merits of the case before it.

(b) The Board shall not be restricted by the rules of evidence appropriate to a trial in court. However, the chairman of the Board hearing a petitioner may, in his discretion, advise petitioner's counsel to limit his presentation to that evidence having a material and relevant bearing on the circumstances surrounding the discharge.

13. RECORDS

(a) Records of the Board shall be open to the Veterans' Administration.

(b) Upon application in person at the office of the Discharge Review Board, the Board may furnish to a petitioner or his counsel such information from the official records pertaining to a discharge or discisal as may be necessary in order to permit of a fair and impartial review. However, classified matter of the Department of the Navy will not be disclosed or made available to the applicant or his counsel. When it is necessary in the interests of justice to acquaint the applicant with the substance of such matter, the Board will obtain and make available to the petitioner or his counsel such summary of the classified matter as may be in the judgment of the Board relevant to the case and as will not be incompatible with the public interest. Under no circumstances will derogatory information relative to any other individual be obtained for or made available to petitioner or his counsel. However, such information may be obtained for use by the Board if considered necessary for arriving at a proper decision in any case.

(c) The Board will not furnish copies of the Record of Review or Discharge or copies of official records in its custody except as the Secretary of the Navy may direct. The records of the Board in a particular case (except classified matter) are available for inspection by the petitioner or his duly authorized representative in the offices of the Board.

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14. WITHDRAWAL

The Board may permit the petitioner to withdraw his request without prejudice at any time before the Secretary of the Navy acts on the case of review.

Section III

ACTION BY THE BOARD

15. DELIBERATIONS

(a) After a full and fair review of the evidence, the Board shall deliberate in closed session, and shall be governed in its action by the vote of a majority of the Board.

(b) No persons other than members of the Board shall be present at or participate in its deliberations.

(c) Members not concurring may file a minority report.

(d) The Record of Review of Discharge shall be signed by the concurring majority members.

(e) In its deliberations the Board shall be guided by the following principles:

(1) Relevant and material facts concerning the petitioner found by a general or special court-martial (general or summary court-martial under the Articles for the Government of the Navy), or by a court of inquiry or board of investigation where petitioner was in the status of a defendant or interested party, as approved by the reviewing authorities shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion.

(2) Relevant and material facts stated in a specification to which the petitioner pleaded guilty before a general or special court-martial (general or summary court-martial under Articles for the Government of the Navy) or where upon being confronted by such a specification the petitioner elected to resign for the good of the service or to accept a discharge to escape trial by a general court-martial, shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion or unless the petitioner shall show to the Board's satisfaction, or it shall otherwise appear, that arbitrary or coercive action was taken against him at the time which was not apparent to the reviewing authority from the face of the record.

(3) A document evidencing separation from the naval service normally relates only to the naval service rendered during the term of service thereby terminated. Accordingly, the evidence before the Board which may be considered in connection with a particular discharge document will normally be restricted to that which is relevant and material to the petitioner's particular term of naval service or to his character, conduct, physical condition, or other material matter as revealed at the time of his entry into the particular term of naval service, during that term of

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naval service, or at the time of his separation therefrom. Where, in a particular case, the Secretary of the Navy has authorized reenlistment with a view to the redemption of a prior discharge through completion of a subsequent term or terms of naval service, [illegible] Board may consider evidence similarly relating to the subsequent term or terms of naval service to which the redemption proposal pertains.

(4) In order to warrant a change, correction, or modification of the original document evidencing separation from the naval service, it is incumbent on the petitioner to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the original document was improperly or inequitably issued under standards of naval law and discipline existing at the time of such original separation, or under such standards differing therefrom in the petitioner's favor which subsequent to his separation were made expressly retroactive to separations of the type and character had by the petitioner. The standards of naval law and discipline herein contemplated are those standards stated in statutes, regulations, bureau manuals, directives of the Department of the Navy, and other appropriate authority, together with interpretations thereof by the courts, the Attorney General, and the Judge Advocate General of the Navy. Should the Board find in a particular case that a retroactive application of revised discharge standards or a specific waiver of an applicable administrative regulation would be required in order to grant a change, correction, or modification essential to the achievement of a just and equitable result, and should no authority for such retroactive application or specific waiver exist, the Board may set forth the circumstances, may incorporate in its decision a recommendation that the Secretary of the Navy authorize the retroactive application or the specific waiver in the particular case, and may formulate its decision precised on a grant of the necessary authority by the Secretary of the Navy. The Board may also change, correct, or modify a discharge document where, in the particular case, the Secretary of the Navy has authorized reenlistment with a view to the redemption of a prior discharge through honorable completion of a subsequent term or terms of naval service, and where it satisfactorily appears to the Board that the conditions of the redemption have been fulfilled.

(5) A recommendation for reenlistment may be recorded by the Board in an appropriate case, as authorized in paragraph 2(c), regardless of the nature of the Board's decision with respect to a change of discharge. In determining whether to record a recommendation for reenlistment, the Board shall consider, among other appropriate criteria, the petitioner's maturity, the sincerity of his service motivation, his potential value to the naval service, and the degree of risk of unsatisfactory performance in a further term of naval service.

16. FINDINGS OF FACTS

The Board shall make findings of facts in each case which shall include the following:

(1) Type and nature of discharge or dismissal certificate or other [illegible]

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evidence of discharge or dismissal which was issued to the person concerned upon separation from the naval service.

(2) Authority under which discharge or dismissal was issued.

(3) Circumstances surrounding the discharge or dismissal as found by the Board to be established from all the evidence considered. This includes material and relevant facts showing in what specific particulars the original discharge or dismissal certificate was or was not proper or equitable under standards of naval law and discipline applicable to the case as defined in paragraph 15(a)(4).

(4) Conduct and character of petitioner during the entire period of his naval service in the enlistment or other service period which was terminated by the discharge or dismissal under consideration.

(5) Such other facts as may be disclosed that are necessary and pertinent to the issues in any particular case.

17. CONCLUSIONS

The Board, on the basis of its findings, shall prepare conclusions which shall state (a) whether or not any change, correction, or modification should be made in the type or character of the discharge or dismissal given; (b) when pertinent, the particular change, correction or modification that should be made; and (c) the reasons why a change, correction or modification should or should not be made. This should not include comments on the actions of others in the naval service. Where such comment is warranted, it should be made the subject of an official communication entirely independent of petitioner's case.

18. DECISION

(a) The Board shall next record its decision. The nature of any change, correction, or modification to a certificate of discharge or dismissal shall be specified with particularity. The type and character of document evidencing discharge, dismissal, or other separation which may be adjudged shall be that form of separation certificate in use at the time of petitioner's separation from the naval service which the petitioner would have received had he been given a proper form of separation certificate at that time, or, if no longer available, the type of certificate that has since superseded it. A form of separation certificate which came into use subsequent to the petitioner's separation from the naval service may be adjudged where it has expressly been made retroactively applicable to separations occurring at the time of the petitioner's separation. Where a general retroactive application of a form of separation certificate has not previously been granted, and where the Board finds that such retroactive application is essential to the achievement of a just and equitable result in a particular case, the Board may proceed as set forth in paragraph 15(a)(4) in seeking authority for such retroactive application.

(b) The General Discharge may be assigned when warranted without regard to date of separation.

(c) The Board may include in its decision a recommendation for reenlistment as authorized in paragraph 2(d).

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(d) The decision of the Board shall not be disclosed to petitioner, his counsel, or to anyone not required to know the decision, until the record of review has been acted upon by the Secretary of the Navy.

19. ORDER

A written order based on the decision shall be prepared for transmittal to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and signed by the President of the Panel.

20. RECORD OF PROCEEDINGS

(a) When the Board has concluded its proceedings, the Secretary of the Panel shall prepare a complete original record thereof. Such record shall include the request for review, a transcript of the hearing, if any; affidavits, papers, and documents considered by the Board exclusive of official Department of the Navy records; all briefs and written arguments filed in the case; the Record of Review of Discharge and order of the Board; any minority report prepared by dissenting members of the Board, and all other papers and documents necessary to reflect a true and complete history of the proceedings.

(b) The record of proceedings of the Board and the action transmitting the record to the Secretary of the Navy for review shall not contain recommendations of any character which relate to matters beyond the scope of the Board's authority. To the extent that such recommendations are warranted, they should be made a matter for separate communication with the departmental agency having cognizance of the subject matter but should not be associated with the records of the petitioner before the Board.

Section IV

REVIEW BY THE SECRETARY OF THE NAVY

21. TRANSMITTAL OF RECORD

The original Record of Review of Discharge in each case shall be transmitted forthwith by the President of the Navy Discharge Review Board to the Secretary of the Navy for final review.

22. ACTION BY THE SECRETARY OF THE NAVY

(a) The Secretary of the Navy will direct such action in each case as is determined to be appropriate, including the return of the record to the Board for further consideration when deemed necessary.

(b) The procedure of the Board on such further consideration will conform as nearly as practicable to that heretofore prescribed, except that the scope of the action of the Board will be limited to the matters specified by the Secretary of the Navy in the directive ordering such reconsideration.

(c) The Secretary of the Navy, after his final action, will return the record to the Discharge Review Board. The Board will notify the petitioner of the action taken in his case, then forward the Record of Review and order to Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, for the following administrative acts:

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(1) Carry out the order of the Discharge Review Board in respect to the discharge or dismissal in question.

(2) Place the Board's order and the Record of Review ... record.

Section V

THE PANEL

23. MEMBERS

(a) The Panel shall consist of all members of the several boards of review and of all officers detailed to the Office of the Discharge Review Board.

(b) Members of the Panel shall report to and be responsible to the President of the Panel.

(c) No new member may act officially with respect to any case before the Board until his name has been added to the list of members named in the most recently issued precept signed by the Secretary of the Navy or his authorized representative.

24. CHANGES IN MEMBERSHIP

Additions to and other changes in the membership of the Panel shall be made as circumstances warrant, with the approval of the Secretary of the N...

25. MEETINGS

Meetings of the Panel may be called by the President of the Panel. The Panel will meet in Washington at such times and places as designated ... the President.

26. ADMINISTRATIVE REGULATIONS

The Panel shall, from time to time, initiate such changes in the administrative regulations and procedures as may be deemed advisable, for the approval of the Secretary of the Navy.

27. DUTIES OF PANEL OFFICERS

(a) President

(1) The President of the Panel shall, from time to time, constitute boards charged with the review functions over discharges and dismissals of Navy and Marine Corps personnel, as required by Section 301 of Public Law 346, Seventy-eighth Congress.

(2) He shall designate a Secretary of the Panel and the recorders of the several boards.

(3) He shall make provisions for close liaison with the Army and Air Force Discharge Review Boards and for such exchange of information ... be considered mutually beneficial.

(4) He shall maintain close contact with the Veterans' Administration.

(5) He shall report to and be responsible to the Secretary of the Nav...

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(6) He shall prepare an annual report of the activities of the Panel and of the boards for submission to the Secretary of the Navy.

(7) In the absence or incapacity of the President, the senior member of the Panel will serve as acting President for all purposes.

(c) Secretary

(1) The Secretary shall examine requests for review and, when necessary, obtain from the petitioner, or from the records of the interested bureau or service, such additional data as may be required to furnish complete information to the Board.

(2) He shall keep the records of the Panel.

(3) He shall keep a docket of pending petitions, and a record of completed reviews.

(4) He shall assign petitions to the appropriate board for review.

(5) He shall maintain custody of all records and documents transmitted to or filed with the Board.

(6) He shall perform such other duties as may be prescribed by the President of the Panel.

Section VI

THE BOARD

28. MEMBERS

A board shall consist of five members, and at least three of the five members of each board should belong to the branch of the naval service (Navy or Marine Corps) from which the person whose case is being reviewed was discharged or dismissed unless petitioner specifically waives this requirement in writing.

29. REPORTER

The reporter shall record the proceedings of the Board in all hearings and such other discharge reviews as the Board Chairman may desire.

30. TIME AND PLACE OF MEETING

The boards shall be convened at the call of the President of the Panel and shall recess and adjourn at his order. The boards shall sit at a time and place to be fixed by the President of the Panel.

31. DUTIES

(a) Board

(1) The Board shall review, on its own motion or upon the request of a former officer or enlisted man or woman or, if deceased, by the surviving spouse, next of kin, legal representative or guardian, the type and nature of the discharge or dismissal in question.

(2) In the event the petitioner does not appear in person or by counsel, the Board shall review the case on the basis of the official records and documentary or oral evidence presented by or on behalf of the petitioner.

440 Digitized by Google

(3) In the event the petitioner appears in person or by counsel, the Board shall assemble to hear evidence offered by or on behalf of the petitioner and to consider the official records. After the conclusion of such hearings, the Board shall, as soon as practicable, [illegible] its findings, conclusions and decision. Based thereon, [illegible] shall prepare its Record of Review of Discharge.

(b) Quorum Number

The senior member of a board shall serve as chairman thereof and shall rule upon matters of evidence and procedure. He may be overruled by a majority vote.

(c) Recorder

(1) The recorder of the Board shall carefully examine and present the official record of the discharged person.

(2) The recorder shall maintain close liaison with petitioner's counsel in this case, making available, in the office of the Board, such official records pertaining to petitioner as counsel may require in the proper preparation of petitioner's case, except:

a. Classified matter and original CBI files (See paragraph 12(b)).

b. Service records of other personnel, whether on active duty or discharged (See paragraph 13(b)).

(3) When the petitioner is without counsel, the recorder shall:

a. Submit pertinent evidence in the petitioner's behalf, in proper documentary form or orally.

b. Submit to the Board, when considered warranted, a written brief analyzing the evidence presented.

(4) The recorder shall prepare the Record of Review of Discharge of the Board.

(5) The recorder shall perform such other duties as may be assigned to him by the President of the Board.

Section VII

Miscellaneous

12. Presentation of Petitions

(a) A request for review of a discharge or dismissal with the view of having it changed, corrected, or modified should be addressed to:

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Navy Discharge Review Board
Department of the Navy
Washington 25, D. C.

(b) A request for other purposes, such as permission to reenlist or extracts of records, should be addressed to the appropriate address indicated below, depending on whether the person in question was formerly in the United States Navy or United States Marine Corps:

Chief of Naval Personnel
Department of the Navy
Washington 25, D. C.

or

Commandant of the Marine Corps
Department of the Navy
Washington 25, D. C.

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APPENDIX

Section 301, Servicemen's Readjustment Act of 1944, as amended, 38 U.S.C. 693h, is quoted herewith:

The Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy, after conference with the Administrator of Veterans' Affairs, are authorized and directed to establish in the Army, Air Force, and Navy Departments, respectively, boards of review composed of five members each, whose duties shall be to review, on their own motion or upon the request of a former officer or enlisted man or woman or, if deceased, by the surviving spouse, next of kin, or legal representative, the type and nature of his discharge or dismissal, except a discharge or dismissal by reason of the sentence of a general court martial. Such review shall be based upon all available records of the service department relating to the persons requesting such review, and such other evidence as may be presented by such person. Witnesses shall be permitted to present testimony either in person or by affidavit and the person requesting review shall be allowed to appear before such board in person or by counsel: Provided, That the term "counsel" as used in this section shall be construed to include, among others, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 101 of this title. Each board shall have authority, except in the case of a discharge or dismissal by reason of the sentence of a general court martial, to change, correct, or modify any discharge or dismissal, and to issue a new discharge in accord with the facts presented to the board. The Articles of War and the Articles for the Government of the Navy are amended to authorize the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy to establish such boards of review, the findings thereof to be final subject only to review by the Secretary of the Army, the Secretary of the Air Force, or the Secretary of the Navy, respectively: Provided, That no request for review by such board of a discharge or dismissal under the provisions of this section shall be valid unless filed within fifteen years after such discharge or dismissal or within fifteen years after June 22, 1944, whichever be the later: And provided further, That the authority conferred upon the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy by this section shall vest in and be exercised by the Secretary of the Treasury, at such times as the Coast Guard is operating under the Treasury Department, with respect to the discharge or dismissal of former personnel of the Coast Guard, and that the findings of boards established pursuant to such authority shall be final subject only to review by the Secretary of the Treasury. June 22, 1944, c. 288, Title I, Section 301, 58 Stat. 286, as amended Aug. 8, 1946, c. 822, 60 Stat. 938; July 26, 1947, c. 343, Title II, Sections 208 (a), 207 (a), 61 Stat. 501, 502; Aug. 10, 1949, c. 412, Section 12 (b), 63 Stat. 581.

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DEPARTMENT OF THE NAVY
Office of the Secretary
Washington 25, D. C.

SECNAV 5430.13A
Op-921D
Ser 3819P92
10 August 1954

SECNAV INSTRUCTION 5430.13A

From: Secretary of the Navy
To: All Ships and Stations

Subj: Naval Intelligence investigative jurisdiction and responsibilities

Ref: (a) Executive memorandum of 26 Jun 1939 relating to the investigation of espionage, counterespionage, and sabotage
(b) Delimitation Agreement of 23 Feb 1949

1. Purpose. This Instruction defines and delimits the investigative jurisdiction and responsibilities of the Office of Naval Intelligence and field components thereof.

2. Cancellation. SECNAV Instruction 5430.13 of 18 July 1953 is hereby canceled.

3. Discussion. SECNAV Instruction 5430.13 permitted the use of the investigative facilities of Naval Intelligence in any matter in which there was a naval interest and which was not within the exclusive investigative jurisdiction of another Government department or agency. However, this Instruction, a restatement only of a SECNAV letter of 1 November 1945, was couched in broad general terms and lacked a statement of specific policy concerning the types of investigations in which it is desirable to utilize Naval Intelligence facilities. The responsibilities of Naval Intelligence have so altered since 1945 as to require such a statement of policy, including a delineation of the types of investigations which Naval Intelligence may be called upon to undertake. This delimitation is necessary in order to confine the investigative effort of Naval Intelligence to those matters requiring the application of professional investigative techniques and to eliminate those susceptible of administrative solution within a command.

4. Mission. The mission of the Office of Naval Intelligence includes the administration, operation, and maintenance of an investigative service for the Naval Establishment in order to accomplish the purposes set forth in references (a) and (b) and in this Instruction.

a. Reference (a), implemented by reference (b), conferred an exclusive investigative jurisdiction upon the Office of Naval Intelligence, the Federal Bureau of Investigation of the Department of Justice, the A. C. of S., G-2, General Staff, Department of the Army,

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and the Office of Special Investigations, United States Air Force, in the following categories of cases:

(1) Actual or potential espionage.
(2) Actual or potential sabotage.
(3) Actual or suspected subversive activities.

5. Policy. In addition to the above-mentioned categories of cases, the facilities of Naval Intelligence shall be utilized in and limited to the following types of investigations:

a. Matters pertaining to fraud against the Government, including irregularities in connection with the procurement or disposition of naval property and such matters or activities which may be related or incidental thereto, provided that the matter involves naval personnel, civilians under naval control, or is a matter under naval administrative control, and the investigative jurisdiction is not placed specifically and exclusively under another Government department or agency.

b. Major violations of the Uniform Code of Military Justice, such as murder, manslaughter, rape, larceny, robbery, forgery, mayhem, sodomy, arson, mutiny, sedition, extortion, burglary, perjury, and certain conduct punishable under articles 133 and 134 of this code, such as smuggling, trafficking in narcotics, black-market activities, and violations of customs, postal, and currency regulations.

c. Personnel background investigations within the jurisdiction of the Naval Establishment, including those required by Executive Order 10450 and by existing Department of Defense and Department of the Navy Instructions.

d. Security investigations, including those involving the compromise, leakage, or unauthorized disclosure of classified information.

e. Special investigations as required by the Naval Establishment, comprising those cases containing unusual circumstances or aspects of sensitivity which may require unusual techniques and the exercise of a high degree of discretion.

6. Instruction. Any of the above listed offenses, violations, or matters requiring investigative effort will be referred, without delay, by the command concerned to the Office of Naval Intelligence or to a field component thereof, whenever and wherever such facilities are available, for appropriate action. Such action may consist in either investigation by Naval Intelligence, or in the referral by Naval In-

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telligence, where appropriate, to another Government department or agency having sole or concurrent investigative jurisdiction.

a. In cases where immediate referral to Naval Intelligence is not possible or practicable, as for example, in the case of suspected sabotage in a ship at sea, the commanding officer should conduct such investigation as the circumstances indicate or as higher operational authority may direct. However, if the investigation conducted by the commanding officer is a preliminary to a later full investigation to be conducted by Naval Intelligence, he should take appropriate measures to insure the preservation of all possible evidence and avoid any action which might tend to jeopardize or compromise investigative possibilities. The Director of Naval Intelligence, or his field representative, may decline any case where, in his judgment, premature action has materially compromised the situation.

7. Liaison With Other Federal Agencies. Matters which may be of investigative interest to other Federal agencies, such as the Federal Bureau of Investigation, enforcement agencies of the Treasury Department, the Office of Special Investigations of the Air Force, or the Counter-Intelligence Corps of the United States Army, and which come to the attention of a commanding officer, shall be referred to the Director of Naval Intelligence or his field representative as the established liaison between the Naval Establishment and such agencies. Commanding officers will instruct their personnel to follow this procedure except in emergencies or where special arrangements have been made with the approval of Naval Intelligence.

8. Delimitation. Minor offenses shall be handled by personnel attached to the command without recourse to the facilities of Naval Intelligence. Naval Intelligence facilities will not be utilized in minor or petty matters and they are not normally required in connection with offenses such as desertion or unauthorized absence where the facts are usually readily ascertainable, nor should they be required for routine administrative investigations within a command, or with thefts or loss of personal property. The facilities of Naval Intelligence are to be reserved, except under unusual circumstances, for the investigation of matters or situations of gravity which also require the application of professional and technical investigative methods.

a. Questions regarding the priority of, availability of facilities for, or the propriety of conducting, any specific investigation requested shall be referred to the Director of Naval Intelligence or to his delegated representatives for decision.

44?

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9. Other Naval Investigative Facilities. Except as noted in SECNAV Instruction 5840.1 of 26 June 1953 nothing herein is to be construed as infringing upon, conflicting with, or restricting the investigative functions of the Naval Inspector General, the United States Navy Shore Patrol, courts of inquiry, and investigations and courts-martial conducted pursuant to the Uniform Code of Military Justice and regulations promulgated thereunder. Attention is directed, however, to the fact that the facilities of Naval Intelligence may be made available, when appropriate, to assist these activities in their official duties, provided such assistance is within the policy expressed by this Instruction.

10. Credentials. Naval Intelligence representatives carry credentials accrediting them to conduct investigations of official concern to the Naval Establishment. These credentials are to be accorded full recognition when presented to naval commands and activities for access to naval installations.

11. Area of Operations. Naval Intelligence investigative facilities are available in all continental naval districts, in the river commands, in the extracontinental naval districts, and in COMNAVMARIANAS, COMNAVPHIL, COMNAVFE, and CINCNELM. Naval Intelligence investigative facilities shall be extended to other areas only where an extraordinary situation makes such use absolutely essential. Requests for investigative personnel in such instances shall be addressed to the Director of Naval Intelligence.

THOMAS S. GATES, Jr.
Under Secretary of the Navy

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JACKTAR, Earl Paul
DOB: 5 Apr 1919, Chicago, Ill.

Ref: IO-PRNC 119 of 1 Oct 1955, same subj

I

DOE, John Edgar, YNSN, 000 00 00, USN

Ref: IO-PRNC 119 of 1 Oct 1955, subj:
JACKTAR, Earl Paul

I

ROE, Richard Alex, SK3, 000 00 00, USN

Ref: IO-PRNC 119 of 1 Oct 1955, subj:
JACKTAR, Earl Paul

II (reported to use narcotics)
(reported to attend Communist meetings)

J. R. BROMLEY
By direction

Distribution
SNDL F-28 (10)
IO's (10)
CINCNELM
COMNAVFE
COMNAVPHIL
COMNAVMARIANAS

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be returned to the DIO's for filing. Copies of signed statements by military personnel, however, may be delivered to cognizant commands for use in evidence during the course of disciplinary proceedings.

13. Use of the 6-J Code Symbol. The practice of placing the 6-J code symbol on reports, letters and memoranda pertaining to sexual perversion will be discontinued. This procedure was established in order to restrict the handling and to facilitate the indexing and filing of such correspondence in the Office of Naval Intelligence, and has been found to be confusing and ineffective. In the future investigation reports, investigation requests (152s and Notices of Case Pending), letters, memoranda, and correspondence involving or relating to sexual perversion or sexual misconduct, in which the descriptive or graphic material dictates special handling, will be forwarded between Naval Intelligence offices in double envelopes with the inner envelope stamped with the "6-J" code symbol. The "6-J" code symbol will not be affixed to the contents of the envelope.

19. 6-J Code Symbol not to be used outside of Naval Intelligence Offices. In mailing or transmitting investigation reports, letters or memoranda relating to sexual perversion or sexual misconduct to commands, offices and bureaus outside Naval Intelligence, the 6-J code symbol will not be used. However, it is suggested that the inner envelopes containing this data be appropriately marked to ensure restricted handling, for example, "TO BE OPENED BY THE COMMANDING OFFICER ONLY OR BY THE EXECUTIVE OFFICER". Commands, offices and bureaus outside Naval Intelligence should be instructed to return the material, or future correspondence related thereto, to the IO/DIO marked to ensure restricted handling, for example, "TO BE OPENED BY THE IO/DIO ONLY". This of course will be accomplished by the use of the double envelope with the inner envelope marked appropriately. All inner envelopes containing data in the sexual perversion and sexual misconduct field forwarded to the Office of Naval Intelligence shall be marked "TO BE OPENED BY OP-921D ONLY".

20. Reports covering a Phase of an Investigation Involving Sexual Perversion or Sexual Misconduct to be forwarded in an Envelope Stamped 6-J. Reports, letters and memoranda covering a phase of an investigation involving sexual misconduct shall be forwarded between Naval Intelligence offices in a double envelope with the inner envelope stamped 6-J even though no material contained therein is actually obscene, since such reports become part of a single file which does contain such information.

21. Use of the Teletype in Subject Cases. Where the use of teletype is considered necessary in investigation of this nature it is considered desirable to eliminate therefrom any use of the word "homosexual", and variation or synonym thereof, and any details of alleged acts or circumstances of the case. Identification of such cases in teletype messages shall be made by use of the code symbol "6-J". All detailed information

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and investigative leads in such cases should be disseminated on either Investigative Request Form 152 or Investigative Report Form 119 rather than by teletype.

22. Index and Cross Reference Cards required in Subject Cases. The following procedure will be followed in the future in all cases of investigation reports involving sexual misconduct:

a. A 3 x 5 card in triplicate will be submitted with the investigation report on subject of said report. Only one card is required on individuals mentioned, involved or named therein as an admitted or accused pervert, or who is listed therein as a suspect.

b. Each card will carry appropriate identification data such as service number, occupation, date and place of birth or place of residence, as appropriate or available. A minimum of such identification is appropriate where it is unique to the individual such as is the case of the service number.

c. A card concerning the subject of the investigation shall reference the investigation report. Cards on other individuals involved in the investigation shall also reference the investigation report and the subject of the investigation report by name. Each card shall list the individual thereon in one of three categories:

I. Admitted
II. Accused
III. Suspected

d. Any indication of activity in the fields of subversion, or narcotics by Class I, II or III individuals as outlined in c above shall carry the additional identification Subversive, or Narcotics as applicable.

e. Sample Case and Carding thereof:

IO-PRNC 119 of 1 Oct 1955, Subj: JACKTAR, Earl Paul,

JACKTAR, Earl Paul, born 5 April 1919, Chicago, Illinois, an admitted homosexual names DOE, John Edgar, YNSN, 000 00 00, USN and ROE, Richard Alex, SK3, 000 00 00, USN as two enlisted men with whom he had engaged in homosexual acts. DOE admits acts and makes statement confirming his admission. In addition, he states that he knows ROE attended Communist meetings in 1948 when they were stationed together in Boston. Also saw ROE smoking marijuana on one occasion. ROE could not be located in the Potomac River Naval Command for questioning. Lead sent to ONI.

457

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9. Content of Signed Statement. In investigations of naval personnel who are alleged to be engaged in homosexual activities, it is suggested that any signed statements obtained contain only such information as the person making the statement actually knows and concerning which he is competent to testify. The names of persons suspected or merely thought to be perverts should not be included in such statements, but may be recorded locally as information of possible future interest.

In taking a statement from a subject or a witness in a homosexual case, care should be exercised that all factual material is set out in explicit terms. Any acts or tendencies should be fully described in layman's language, and definitions included for any unusual words or phraseology employed, or where required to resolve any ambiguity. In this regard the terms "active" or "passive" participation or other such terms which the Subject may later claim to have a different meaning are to be guarded against, unless followed by an explanation, in his own words, signifying what the words mean to him. In any event it must be insured that the Subject does, in fact, understand the meaning and import of any such words used by him as well as those used by the agent in questioning him. Notation that such understanding did exist should be included in the investigation report with supporting details. As in all other criminal type investigations the agent must be aware of the elements constituting the offense under investigation and direct his efforts toward securing evidence, both in the form of the confession, as well as independent of it, specifically supporting - or negating - each and every one of these elements. In regard to Class III homosexual cases, as defined in SECNAV INSTRUCTION 1620.1, where prosecutive action is unlikely, the investigative effort should be directed toward obtaining as much detail as practicable to fulfill administrative requirements for the appropriate disposition of the case against the Subject.

10. Interested Commands to be Notified. If, during investigations of Naval personnel, Army or Air Force personnel are named as homosexual, such information if factual, should be furnished to local Army or Air Force authorities.

11. Routine "Backgrounds" not Necessary. It has been noted that the practice is followed in some districts of conducting extensive background investigations of naval personnel allegedly engaged in homosexual activities, including numerous interviews with friends, neighbors, business associates, and references. Experience has shown that such inquiries seldom develop any pertinent information except in rare cases when the subject has been extremely promiscuous and indiscreet. This type of investigation might also prove very embarrassing to Naval Intelligence and do an injustice in those cases where improper conduct on the part of subject is not established.

12. Proper Technique in Homosexual Cases. It is suggested, therefore, that investigations be directed toward ascertaining whether the subject

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currently associates or corresponds with known homosexuals and the reason for and the nature of his association with such persons. If information obtained by surveillance or other means discloses circumstances strongly indicating an unnatural relationship between subject and such persons, it has been found that interviews with these latter persons will often result in the building up of a case against the subject. An interrogation of subject at that point will usually result in a confession.

13. False Admissions. It should also be borne in mind that in some instances naval personnel have attempted to obtain their release from the service by making untrue admissions of homosexual activity and naming numerous individuals with whom they claim to have had such relations.

14. Limitations on Homosexual Investigations. These investigations must be confined to cases where definite allegations have been made and PROPER AUTHORITY HAS REQUESTED THE INVESTIGATION. Any activity which might be interpreted as "witch hunting" or "finger pointing" should be carefully avoided.

15. Disposition of Class II Cases. Reference (a) sets forth in detail the procedure for disposition of naval personnel who are homosexuals. This reference directs that in Class II cases the accused shall be confronted with charges and specifications for trial by General Court Martial.

16. Resignation or Agreement to Accept an Undesirable Discharge Erroneously Taken. It has been noted that in the investigation of some Class II cases where the subject has made a written statement admitting his activities, the investigator has taken subject's resignation or agreement to accept an undesirable discharge. It is considered desirable by the Bureau of Naval Personnel that reference (a) be followed literally in the matter of confronting accused homosexuals with charges and specifications. Such a procedure is an administrative function and, therefore, not within the province of Naval Intelligence. When competent naval authorities have expressly requested the assistance of Naval Intelligence in such cases, its participation shall be limited to the gathering of pertinent evidence, which may include the obtaining of a signed statement from the subject. Its activities shall not include the preparation of or confronting the accused with charges and specifications, or obtaining his tender of resignation, or agreement to accept an undesirable discharge.

17. Dissemination of Investigation Report. A report of the investigation, together with any statements obtained, shall be furnished promptly to the proper authorities in order that any administrative action required may be taken. All reports are furnished on a loan basis and must

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DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.

ONI INST 5520.15B
Op-921D
15 Oct 1956

FOR OFFICIAL USE ONLY

ONI INSTRUCTION 5520.15B

From: Director of Naval Intelligence
To: Distribution List

Subj: Sexual Misconduct; Investigation of

Ref: (a) SECNAV INSTRUCTION 1620.1

1. Purpose. To outline the proper investigative procedures to be followed in the investigation of subject cases.

2. Cancellation. ONI INSTRUCTION 05520.15A of 5 April 1955 is hereby cancelled and superseded.

3. Background. This Instruction relates both to homosexuality and other types of sexual misconduct. It provides policy relating to investigations, interrogation methods and the modified use of the 6-J code symbol in subject cases.

4. Importance of Subject Investigations. In the past, numerous investigations of homosexuals among service personnel have been conducted successfully by Naval Intelligence. It was considered that such persons constituted a cumulative danger to both security and morale in the Navy. Consequently, from a security viewpoint, it was necessary to separate them from the naval service whenever possible.

5. Proper Authorization Required for Each Investigation. It is necessary that a valid request for investigation be received by Naval Intelligence to cover each individual investigated. Therefore, where a request has been received concerning a suspected homosexual, and when a statement is obtained from that person implicating other service personnel, investigation of the newly named suspects will not be made on the basis of the request covering the original suspect. Any efforts to use an authorized request on one individual as a "springboard" to conduct investigations on others named by him is inconsistent with approved investigative practices. When the objective of the initial investigation has been achieved and the subject thereof either cleared or sufficient evidence accumulated to constitute a prima-facie general court martial case, the investigation should be closed. Derogatory information concerning other service personnel which has been obtained during the course of the investigation should be brought to the attention of the proper naval authorities. It is then entirely within the province of

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OIR, AstSecNavPers 10 January 1957

COVER SHEET 683

Attached are pages to NCPI 29, CHARGES, REMOVALS, AND OTHER ACTIONS UNDER THE SECURITY PROGRAM, which should be substituted as shown on the table on the reverse side of this sheet.

REASONS FOR CHANGES

NCPI 29.4-2c. - - Revised to reflect the discontinuance of USCSC FORM INV 198 and to provide new instructions concerning processing of memorandum reports.

NCPI 29.6-4b. - - Revised to conform with appointing authority provisions.

NCPI 29.6-5c through f. - - Revised to reflect redesignation of USCSC transmittal forms 205 and 206 and to amend action report procedures to conform with latest CSC requirements.

NCPI 29.7-6. - - Revised to clarify procedures in security investigations for sensitive-critical positions, particularly with respect to the use of Standard Forms 74 and 72.

NCPI 29.7-11. - - Revised to conform with the break-in-service provisions of DOD Directive 5210.8 of 29 June 1955 and Chapter 15, United States Navy Security Manual for Classified Matter.

NCPI 29.7-12. - - Revised to eliminate the three-year time limit for validity of prior investigations and to conform with the break-in-service provisions of NCPI 29.7-11, as revised.

NCPI 29.8-Encl. 9(CHART). - - Revised to reflect amendments to investigative requirements of NCPI 29.7-11 and NCPI 29.7-12.

NCPI 29.8-Encl. 11. - - Revised to emphasize the necessity of complete activity designation and address, and complete name of employee or prospective employee on Standard Form 85.

NCPI 29.8-Encl. 12. - - Revised for the same reasons set forth above for revised NCPI 29.8-Encl. 11.

NCPI 29.8-Encl. 13. - - Revised to clarify and amend procedures in the use of OPNAV Form 5520.1 and Standard Forms 79, 74, 72, and ~~85~~ 86 in investigations for sensitive-critical positions.

Additional amendments to NCPI 29 pursuant to the U. S. Supreme Court decision in the Cole v. Young case, decided 11 June 1956, are being withheld pending prospective release of an Executive Order to supersede Executive Order 10450.

PEN CHANGES

On page 11, NCPI 29.2-9c(5), line 3, change "NCPI 29.6-4" to "NCPI 29.8-Encl. 4."

On page 28, NCPI 29.4-12b(3), last line, change "NCPI 29.6-7" to "NCPI 29.8-Encl. 7."

On page 30, NCPI 29.4-13c(5), line 2, change "NCPI 29.6-8" to "NCPI 29.8-Encl. 8."

E. H. Schantz

E. H. SCHANTZ
Acting Chief of Industrial Relations

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TABLE FOR COVER SHEET 683
(NCPI 29)

REMOVE		INSERT
PAGE	EDITION DATE	PAGE
21 - 22	13 September 1955	21 - 22.01
37 thru 50	13 September 1955	37 thru 50
67 thru 72	13 September 1955	67 thru 72
79 thru 81	13 September 1955	79 thru 82

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AstSecNavPers 23 April 1956

COVER SHEET 642

Attached are pages to NCPI 29, CHARGES, REMOVALS, AND OTHER ACTIONS UNDER THE SECURITY PROGRAM, which should be substituted as shown on the table on the reverse side of this sheet.

REASON FOR CHANGE

Revised to reflect a consolidated list dated November 1, 1955 of organizations designated under Executive Order No. 10450.

ORDERING FORM

Activities should requisition the November 1955 edition of CSC Form 385 in accordance with SecNav Instruction 5600.7 of 18 October 1955. All previous editions of CSC Form 385 are to be destroyed. Activities should order this form based on a 60- to 90-day period, rather than for a longer period.

By direction of Assistant Secretary of the Navy (Personnel and Reserve Forces):

Geo A Holderness Jr

GEO. A. HOLDERNESS, JR.
Chief of Industrial Relations

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TABLE FOR COVER SHEET 642
(NCPI 29)

REMOVE		INSERT
PAGE	EDITION DATE	PAGE
57	13 September 1955	57
58	13 September 1955	58
59	13 September 1955	59
60	13 September 1955	60

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AstSecNavPers 13 September 1955

COVER SHEET 595

Attached is a revision of NCPI 29, CHARGES, REMOVALS, AND OTHER ACTIONS UNDER THE SECURITY PROGRAM. The present NCPI 29 should be removed from the NCPI volume and the attached inserted in its place.

REASONS FOR CHANGES

NCPI 29.2-6.--Rewritten to show the purpose of position of Executive Secretary of the security hearing board and to provide for periodical review by the Secretary of the Navy of the qualifications of persons selected for the position.

NCPI 29.2-7g.--Added to provide for periodical review by the Secretary of the Navy of qualifications of persons made available by the Department of the Navy for service on security hearing boards.

NCPI 29.2-8.--Rewritten to reflect redesignation of "Navy Department Security Appeal Board" to "Navy Department Security Review Board," to show composition of the Board, and to give instructions for selecting Board members, Executive Secretary, and Legal Counsel.

NCPI 29.2-9a.--Subparagraphs (9), (10) and (11) added to show additional responsibilities of the Office of Industrial Relations.

NCPI 29.2-9c(4).--Rewritten to provide for Departmental review of proposed charges prior to suspension except in emergency situations.

NCPI 29.2-9g.--Rewritten to reflect responsibilities of Navy Department Security Review Board.

NCPI 29.2-9h.--Subparagraphs (1), (4) and (5) added to show additional responsibilities of Secretary of the Navy with regard to security procedures. Subparagraphs (1) and (2) renumbered to (2) and (3).

NCPI 29.2-9i.--Amended to prescribe that legal counsel shall be provided to assist Security Screening and Security Hearing Boards and that such counsel shall protect the interests of the Government and the rights of the individual.

NCPI 29.2-10b.--Amended to emphasize that the names of individuals separated under the employee security program shall not be released publicly by anyone employed by the Department of the Navy.

NCPI 29.4-2a.--Amended to reflect the requirements of Executive Order 10550.

NCPI 29.4-3e.--Amended to indicate that the interrogatory should not be used as a substitute for an interview.

NCPI 29.4-3h.--Amended for clarification.

NCPI 29.4-4a.--Amended to prohibit a determination favorable to the individual based on a premise that continuance of his employment will be of value to the national defense despite existing security factors surrounding his case.

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NCPI 29.4-4c.--Amended to require that the letter of decision shall specify the sensitivity of the position involved.

NCPI 29.4-4g.--Added to instruct activities to report all violations of law, as disclosed in the investigations and proceedings under the security program, to the Office of the Judge Advocate General of the Navy, with information copy to OIR Code 110.

NCPI 29.4-10a.--Amended to specify material to be submitted to the Department along with copies of proposed charges submitted for pre-audit.

NCPI 29.4-10a(4).--Amended for clarification.

NCPI 29.4-13l.--Added to instruct hearing boards to report all violations of law, as disclosed in the investigations and proceedings under the security program, to the Office of the Judge Advocate General of the Navy, with information copy to OIR Code 110.

NCPI 29.4-14b(4).--Last two sentences re-written to expand requirement to cover decisions favorable and unfavorable to the individual.

NCPI 29.4-16.--Paragraphs b and c added to show proceedings of Navy Department Security Review Board and to instruct the Board to report all violations of law, as disclosed in the investigations and proceedings under the security program, to the Office of the Judge Advocate General of the Navy.

NCPI 29.7.--This section, "Security Requirements," consolidates the procedures presently in NCPI's 10, 160, 180, and 235, and includes the procedures recently established by the Civil Service Commission, for initiating and processing security investigations required by E. O. 10450 incident to appointments and other personnel actions. (These procedures will be deleted from NCPI's 10, 160, 180, and 235).

NCPI 29.8-Encl. 4.--Amended to include CSC Form 385, to indicate latest list of organizations designated by the Attorney General.

NCPI 29.8-Encl. 11.--Added to give procedural instructions for National Agency Checks and Written Inquiries for non-sensitive positions.

NCPI 29.8-Encl. 12.--Added to give procedural instructions for National Agency Checks and Written Inquiries for Sensitive-Noncritical positions.

NCPI 29.8-Encl. 13.--Added to give procedural instructions for Background Investigations for Sensitive-Critical positions.

Al Pratt

ALBERT PRATT
Assistant Secretary of the Navy
(Personnel and Reserve Forces)

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INSTRUCTION 29

CHARGES, REMOVALS, AND OTHER ACTIONS UNDER THE SECURITY PROGRAM

Section 1. References
2. General provisions
3. Standard and criteria
4. Processing of cases
5. Procedure in cases of separation, withdrawal of application, or transfer, and reimbursement of employees
6. Character and suitability
★ 7. Security requirements ★
8. Enclosures

SECTION 1, REFERENCES

Paragraph No.
References 1-1

1-1. The following are references in connection with this Instruction:

a. Public Law 733, 81st Congress, of 26 Aug 1950, 64 Stat. 476, 5 USC 22-1 (Removals and suspensions in the interest of national security).

b. U. S. Navy Regulations, 1948, Chapter 15.

c. Executive Order 10450 of 27 Apr 1953, as amended, SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT.

d. Memorandum of the Attorney General dated 29 April 1953.

e. Section 9A of the Hatch Act of 2 Aug 1939 (Public Law 252, 76th Congress; 53 Stat. 1148, 5 USC 118).

f. Public Law 623, 80th Congress, of 10 Jun 1948 (62 Stat. 354; 5 USC 652).

g. Public Law 600, 79th Congress, of 2 Aug 1946 (60 Stat. 806, 5 USC 22a).

SECTION 2, GENERAL PROVISIONS

Paragraph No.
Purpose. 2-1
Authority 2-2
Definitions 2-3
Policy. 2-4
Establishing Security Screening Board of the activity 2-5
Establishing Office of the Executive Secretary of the Security Hearing Board of the activity 2-6
Establishing the Security Hearing Board of the activity . . 2-7
Establishing the Navy Department Security Review Board 2-8
Responsibilities 2-9
Release of information 2-10
Designation and rights of counsel 2-11

2-1. PURPOSE. This Instruction prescribes the standard, criteria, and administrative procedures governing the disposition of all security cases involving civilian employees of the Naval Establishment, and applicants for employment by the Naval Establishment. ★It also provides security requirements for all types of personnel actions. ★

2-2. AUTHORITY. This Instruction is issued under authority of:

a. Act of 26 August 1950 (Public Law 733, 81st Congress, 64 Stat. 476, 5 USC 22-1) regarding removals and suspension in the interest of national security.

b. Executive Order 10450 of 27 April 1953, as amended, SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT.

2-3. DEFINITIONS.

a. Applicant.--A person who has applied for a position in the competitive or excepted service but has not entered on duty.

b. Appointee.--A person who has been appointed to a position in the competitive or excepted service and has not completed twelve months of current continuous Federal employment.

c. Complete file.--All reports of investigation or other inquiry, all charges

461

C. S. 595

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and interrogatories, all transcripts of interviews, all transcripts of hearings and exhibits, all rationales analyzing the evidence or setting forth conclusions, findings, recommendations, determinations, decisions, or other actions in cases, and all affidavits, supporting documents, correspondence or memoranda in connection with the investigation, determination, decision and closing of any case or cases.

d. Incumbent employee.--An employee who has completed twelve months of current continuous Federal employment in the competitive or excepted service.

e. National security.--As used herein, the term "national security" relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all other illegal acts designed to weaken or destroy the United States.

f. Navy Department Security Review Board.--A board appointed by the Secretary of the Navy to review security cases of employees suspended under Public Law 733 and E.O. 10450, and to make such advisory recommendations to the Secretary of the Navy with respect thereto as the Board shall duly approve.

g. Security Hearing Board.--A board convened in a Naval activity to hear the security case of an employee of that activity, the members of such board being persons assigned to or employed by activities of the Federal government other than those of the Department of the Navy.

h. Security Screening Board.--A board appointed by the head of an activity from the military and civilian complement of the activity to screen security cases received and recommend to him appropriate action in the matter.

i. Sensitive position.--A "sensitive position" is any position, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security. Such positions will include the following:

(1) Any position, the duties or responsibilities of which require access to Top Secret, Secret, or Confidential security information or material and any other position so designated by authority of the Secretary of Defense or of the Secretary of the Navy or by the head of the activity.

(2) Any position which involves responsibility for the development or approval of war plans, plans or particulars of future major or special operations of war, or critical and extremely important items of war, or policies and programs which affect the over-all operations of any of the components of the Department of Defense. This will include positions at GS-14 and above; positions at GS-12 and 13 if the employee will have access to Top Secret security information; and employment under personal service contract if the employee will have access to Top Secret security information. Additional positions may be designated by the head of the activity as meeting the requirements of the foregoing definition provided that the designation is certified to OIR Code 110 by the activity head.

2-4. POLICY.

a. No civilian will be employed for, assigned to, or retained in any position in the Naval Establishment if such employment, assignment or retention is not clearly consistent with the interests of the national security.

b. Established national policies, founded upon statutes of the United States and Executive Orders of the President, require exclusion and removal from Federal employment of individuals who are unfit for employment for security reasons. Public Law 733, 81st Congress, authorizes the Secretary of the Navy to suspend summarily without pay any civilian officer or employee when he deems such suspension necessary in the interest of national security, and to terminate the employment of such officer or employee if he determines such termination is necessary or advisable in the interest of national security. Section 9A of the Hatch Act makes it unlawful for any employee whose compensation is paid from

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funds authorized or appropriated by Congress to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States. That section also provides that any person violating its provisions shall be removed immediately from the position or office held by him, and thereafter no part of the funds appropriated by any act of Congress for such position shall be used to pay the compensation of such person. The current appropriation act applicable to the Navy prohibits payment of funds appropriated by Congress to any employee who advocates or who is a member of an organization that advocates overthrow of the Government of the United States by force or violence. Executive Order 10450, as amended, states that the interests of the national security require that all persons privileged to be employed in the Navy shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. That Order requires an effective program to insure that the employment or retention in employment of any civilian officer or employee is clearly consistent with the interests of the national security. It also provides that any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the Act of 26 August 1950, or pursuant to Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which findings shall be made a part of the records of such department or agency; and that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

c. While the Navy will assume, unless information to the contrary is received, that all its employees are loyal and that none will act against the security interests of the United States, the vital role of the Navy in national defense necessitates vigorous application of policies designed to insure that no civilian is employed or retained in employment who would take action inimical to the interests of the national security. At the same time, every possible safeguard will be provided to insure that no incumbent employee of the Navy is removed from his employment without an opportunity for a full and fair hearing and a review of the record by the Security Review Board and the Secretary of the Navy.

d. Security determinations will be made pursuant to the Standard and Criteria set forth in NCPI 29.3. Such determinations cannot be made in the abstract. They must be consistently directed to the fitness of the individual on security grounds to hold a specific position. In making the security determination, consideration must be given to the loyalty, habits, activities, attitudes, associations, trustworthiness, reliability, and discretion of the individual involved, and their bearing on the question of whether, because of his access to Navy installations, information or material by virtue of his employment in the position involved, he might either intentionally or inadvertently disclose to unauthorized persons security information or other information the disclosure of which is prohibited by law, or otherwise act against the security interests of the United States. In every case, consideration must be given to the regularly assigned or official position involved (as distinguished from any position to which an employee may have been temporarily detailed as an interim security measure), and the opportunity afforded to the occupant of such position to have access (authorized or otherwise) to security information, or to act to the detriment of the national security.

e. The suspension and removal procedures provided for in this instruction are based on the authority granted by Public

463

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Law 733, 81st Congress, and their use will be limited to cases in which the interests of national security are involved. The authority to suspend employees under this act is delegated to heads of activities ★ subject to the restrictions in NCPI 29.2-9c(4);★ the authority to separate or restore employees under this act is reserved to the Secretary of the Navy. These procedures will be used to supplement, not to substitute for, normal civil service removal procedures. Maximum use will be made of normal civil service removal procedures where national security is not a consideration and such procedures are adequate and appropriate.

2-5. ESTABLISHING SECURITY SCREENING BOARD OF THE ACTIVITY.

a. Established by Chiefs of Bureaus and offices, the Commandant of the Marine Corps, and heads of field activities.--Each official named will establish an activity security screening board, each of which will be composed of not less than three impartial persons (preferably one military officer and two civilians) employed by or assigned to the appointing activity, whose duties are to screen security cases involving incumbents, appointees, and applicants, and to recommend to the head of the activity appropriate action in each such security case. The head of the activity should name the chairman of the board. An employee shall not be designated as a member of the security screening board if he is serving as Executive Secretary of the activity's security hearing board, unless there is no other qualified employee on board at the activity. Assignment of employees to dual roles on both the screening and hearing boards has an adverse effect on public relations, no matter how outstanding the individual may be, since it is difficult for the public to see how a hearing may be completely impartial when the Executive Secretary of the hearing board has previously been exposed to the case while performing his duties as a screening board member.

b. Title. This board will be known as the (activity) security screening board, and any reference to "the board" in this section means such (activity) security screening board.

c. Required qualifications for membership.--Persons, both civilian and military, appointed to the board must meet the following requirements:

(1) Possess the highest degree of integrity, ability, and good judgment.

(2) Have been the subject of a background investigation (Article 1502.3 and Article 1510.2, Chapter 15, U. S. NAVY SECURITY MANUAL FOR CLASSIFIED MATTER, OPNAV INSTRUCTION 5510.1A) or its equivalent, completed with satisfactory results.

d. Board must be disinterested.--It is possible that security cases may be presented to security screening boards composed of members who are closely associated with the individual involved in the security case being screened. In such situations board members will disqualify themselves from the board screening the case and someone will be substituted who is not personally and intimately acquainted with the individual and who does not have any preconceived opinion as to his relative security risk. The personal relationship may be avoided by the head of the activity designating alternates to serve on the security screening board or by creating a special board to screen a case when such action is warranted.

e. Same membership on board throughout case.--Except in exceptional circumstances the three members who screen a security case must be present during all the proceedings and continue to serve on the case until they render the board's recommendation.

f. Modification of military-civilian ratio.--In small activities, the membership of security screening boards may be modified to consist of two military members and one civilian member.

g. One board for geographical area.--Where several small activities occupy the same geographical area, such activities may, by mutual agreement, establish one security screening board to serve all activities concerned.

h. Board optional in very small activities.--In very small activities where the volume of work on the security program

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is such that the head of the activity may personally screen cases, and he elects to do so, he is not required to establish a security screening board.

2-6. ESTABLISHING OFFICE OF THE EXECUTIVE SECRETARY OF THE SECURITY HEARING BOARD OF THE ACTIVITY.

★a. Purpose. Operation of a security hearing board convened to hear the case of a Navy employee will be under the administrative jurisdiction and control of the head of the Naval activity employing the subject of the hearing, regardless of the composition of the board or the command jurisdiction of the board members (NCPI 29.2-9f(4)). In order to provide for this central control, the head of each Naval activity should select a civilian employee of his activity to serve as the permanent Executive Secretary for the security hearing board for the activity (the Board membership will vary from case to case (see NCPI 29.2-7) but the Executive Secretary will be permanently assigned). The person named must have been the subject of a full field investigation or background investigation (as defined in Chapter 15 of the Navy Security Manual for Classified Matter) completed with satisfactory results, and his selection must have been determined to be clearly consistent with the interest of the national security. If possible, the person selected should be someone previously associated with the Navy Department Loyalty-Security Program.

b. Review by Secretary of the Navy of the qualifications of persons designated as Executive Secretary. In order to assure the high caliber of Executive Secretary of the security hearing board, the Secretary of the Navy shall periodically review the qualifications of persons selected for the position. All naval activities, departmental and field, selecting persons for position of Executive Secretary shall furnish to the Department (OIR Code 110), for review by the Secretary of the Navy, a report concerning the person appointed. The information furnished shall include: the person's name, his grade or rating, rank (if military) official title, a brief description of his regular duties, office, telephone number, and a statement as to whether he meets the character and investigative requirements of NCPI 29.2-6a. Commands shall inform the Department (OIR Code 110) of changes in this assignment by referencing the original report submitted and indicating the changes. This report has been assigned the symbol EXOS-12029-3.★

2-7. ESTABLISHING THE SECURITY HEARING BOARD OF THE ACTIVITY.

a. Navy departmental and field activities located in the District of Columbia, Montgomery and Prince Georges counties Maryland, and the city of Alexandria and Arlington and Fairfax counties, Virginia. The Department of Defense establishes and maintains its own security hearing roster for the Washington, D. C., area. This roster is composed of the names of persons nominated for this purpose by the three military departments and the Office, Secretary of Defense. The official roster is kept by the Director of Personnel, Office of the Secretary of Defense, and security hearing boards will be selected from this roster and established as follows. The Executive Secretary (see NCPI 29.2-9e) of the activity Security Hearing Board will request the Chief of Industrial Relations to establish a board to adjudicate any security case in the defined metropolitan area of Washington, D. C. in which the employee has been issued charges and thereafter requests a hearing. The Executive Secretary may make his request by telephone call to Code 131, Extension 76015, but must confirm the request in writing addressed to the Chief of Industrial Relations (OIR Code 110a). The executive Secretary in his request will specify the location in the Washington, D. C. area at which the Board will sit, the number of persons needed to constitute the board, and whether he desires that any of the members be military officers. In the absence of some special circumstance justifying five members, the Board will be composed of three members.

b. All Naval activities in the continental United States (except the metropolitan area of Washington, D. C.) and in Alaska, Hawaii, Panama Canal Zone, Puerto Rico, and the Virgin Islands

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(except those activities in these five specified overseas areas and the continental United States which are geographically isolated from activities of other Federal departments and agencies). --The U. S. Civil Service Commission maintains in its regional offices security hearing rosters for activities of the Federal government located in areas under jurisdiction of the regional offices. These rosters are composed of the names of persons designated for this purpose by the field activities of the Federal government. The Civil Service Commission requested that each field activity or installation having 500 or more full-time employees designate persons possessing the highest degree of integrity, ability, and good judgment, to be available for service as members of security hearing boards of other departments and agencies. It is desirable that military officers designated to the roster be of the rank of Major (USMC) or Lieutenant Commander (USN) or above, and that civilians designated be of grade GS-12 or higher grade. Activities of this class in the Navy are responsible for submitting names of qualified persons (exclude security officers and investigators) to the regional office of the Civil Service Commission having jurisdiction in the area of the activity submitting the names. The list of designees is submitted in duplicate to the regional office.★ ★The list must contain the following information: the name of each person designated; his place of employment (activity, street, city, and state); the telephone number of the office through which arrangements can be made for his services on the security hearing board; and a statement by the submitting officer that each person named on the list has been the subject of a full field investigation completed with satisfactory results and that his designation has been determined to be clearly consistent with the interest of the national security. In the case of military officer designees the letter must state that officer personnel will serve only on boards of activities of the other military departments. The Board hearing the case of a Navy employee must be composed of persons other than those assigned to or employed by activities of the Department of the Navy. It is desirable that persons selected from the roster by activities be assigned to or employed by activities of the other military departments; if this cannot be done, persons selected may be employees of other Federal agencies. It is generally desired that Boards be comprised of one military officer and two civilians. Heads of activities employing 500 or more civilians are urged to enter into voluntary arrangements with heads of nearby Army and Air Force installations of like size to supply on a reciprocal basis a complete security hearing board of at least three members when a hearing is necessary. Where installations of all three military departments are located in approximately the same area a mutual agreement between all the installations should be possible. The arrangement must be coordinated with the Director of the regional office of the Civil Service Commission, since that office will have the roster of persons available for such service, and selection must be made from that roster by the Executive Secretary, subject to the approval of the head of the activity. Activities of the class specified, under such an arrangement, must assure that sufficient personnel have been designated by them to the Civil Service region roster to form a complete security hearing board.

c. Services of Board limited to one case except where otherwise approved by Chief of Industrial Relations.

(1) The Board selected in accordance with NCPI 29.2-7a and b will serve for one case only, except as provided in (2) below. This is required to avoid working undue hardship on the board member or his employer through too frequent or too lengthy absences from assigned duties. The rosters will contain sufficient names to permit rotation of board duty.

(2) In some instances a Naval activity may have a series of security cases scheduled for hearing at approximately the same time. Because of the special circumstances involved it might be more advantageous and more economical to assign the several cases in sequence to the Board then sitting at the Naval activity, than to convene a

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series of boards. When this is the case, the head of the Naval activity should request authority from the Chief of Industrial Relations (OIR Code 110) to continue the Board in session until the several cases are heard. The request should contain the name, rank or grade, position and parent organization of each Board member, so that OIR may secure approval of the appropriate departmental headquarters to continue the detail of its personnel to the Naval activity. The request should state also the number of cases to be heard so that the approximate time of service involved may be estimated. Conversely, Naval activities detailing personnel to other agencies of the Federal government should accord the same procedure in similar circumstances. Such other agencies must obtain approval of the Chief of Industrial Relations (OIR Code 110) to hold Naval personnel for the period necessary to hear their series of cases. The agency desiring to hold the Board member should address its request to the Chief of Industrial Relations (OIR Code 110) via the head of the Naval activity employing the board member. The agency should fully identify the board member, and state the number of cases for which he is to sit. The head of the Naval activity, in forwarding the request to OIR, should state his approval of or objections to such extended service.

d. All Naval activities in overseas areas other than in Alaska, Hawaii, Panama Canal Zone, Puerto Rico, and the Virgin Islands. --Heads of such activities will convene security hearing boards, when required, composed of persons assigned to or employed by the activity employing the subject of the hearing. The persons selected must possess the highest degree of integrity, ability, and good judgment. The head of the activity, in the order convening the board, must state that the persons selected have been the subject of a full field investigation or background investigation (as defined in Chapter 15 of the U. S. Navy Security Manual for Classified Matter) completed with satisfactory results, and that the selection has been determined to be clearly consistent with the interest of the national security.

e. All Naval activities in isolated areas, anywhere. --Heads of such activities will convene security hearing boards, when required, composed of persons from their own military and civilian rolls to hear cases on their employees. The persons selected must be of the high caliber stated above, and the head of the activity must state in his order convening the Board that the persons selected have been the subject of a full field investigation or background investigation (as defined in Chapter 15 of the Navy Security Manual for Classified Material) completed with satisfactory results, and that the selection has been determined to be clearly consistent with the interest of the national security. Further, the head of the activity must state: that the Board is so constituted because the isolated location of the activity makes it impracticable to seek members from other agencies of the Federal government; and, that the persons selected to serve on the Board do not know the person who is the subject of the hearing.

f. Availability of activity designees for service on Security Hearing Boards. -- It is recognized that many of the individuals named by the naval activities to the Security Hearing Board roster are occupying responsible positions which require close attention to pressing business, and that the urgency of their regular duties causes them to be reluctant at times to serve as members of Hearing Boards. However, unavailability for service for other than the most compelling reasons can seriously delay and impair the effectiveness of the security program. Roster members shall be released from their obligation to serve on Security Hearing Boards only when justified by compelling reasons which have been approved by the head of the activity. The need for prompt adjudication of security cases is self evident. Activities concerned are relied on to furnish strong support to this end by seeing to it that their roster members are adequate in numbers and serve when

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called. Each activity shall maintain a continuing review of the number of individuals designated for the Security Hearing Board Roster and insure that the maximum number possible have been designated and are available for assignment to Security Hearing Boards. Further, each activity shall make known to the persons designated to the Roster that they shall serve on Security Hearing Boards when selected, unless they are excused for compelling reasons approved by the head of the activity. Naval activities encountering difficulty in assembling Security Hearing Boards should request the appropriate Naval District Headquarters to confer with equivalent functions of the Army and Air Force in the area with a view to overcoming the difficulty. If a satisfactory resolution of the difficulty cannot be made in the area the matter should be referred to the Chief of Industrial Relations (OIR Code 110), to be taken up with officials of the Department of the Army and Department of the Air Force.

★g. Review by Secretary of the Navy of the qualifications of persons made available by the Department of the Navy for service on security hearing boards. In order to assure the high caliber of security hearing boards, the Secretary of the Navy shall periodically review the qualifications of persons made available by the Department of the Navy for service on security hearing boards. All naval activities, departmental and field, designating persons for service on security hearing boards shall furnish to the Department (OIR Code 110), for review by the Secretary of the Navy, a complete list of the persons designated. The information furnished shall include each person's name, his grade or rating, rank (if Military), official title, a brief description of his regular duties, and a statement as to whether he meets the character and investigative requirements of NCPI 29.2-7. Commands shall inform the Department (OIR Code 110) of changes to the list submitted in accordance with these instructions by referencing the original list submitted and indicating the changes. This report has been assigned the symbol EXOS-12029-4. ★

2-8. ★ESTABLISHING THE NAVY DEPARTMENT SECURITY REVIEW BOARD.

a. Title.--Pursuant to the provisions of Public Law 733 (81st Congress) and Executive Order 10450, the Navy Department Security Review Board is hereby established. The Navy Department Security Appeal Board, previously known as the Navy Department Loyalty and Security Appeal Board and the Navy Department Loyalty Appeal Board, is hereby disestablished.

b. Composition of Board.

(1) Members. Board personnel must possess the highest degree of integrity, ability and good judgment, and must have been the subject of a background investigation completed with satisfactory results (Article 1502.3 and Article 1510.2, Chapter 15, U. S. Navy Security Manual for Classified Matter, OpNav Instruction 5510.1A), or its equivalent. Board members shall be appointed by the Secretary of the Navy. The Board shall consist of a permanent civilian Chairman, nominated by the Chief of Industrial Relations; of a permanent military member, a flag officer of the U. S. Navy, nominated by the Chief of Naval Operations; and of civilian members, one of whom shall be nominated from employees under his cognizance by the Chief of each Bureau, Office and Service of the Navy Department with the exception of the Office of the Chief of Naval Operations, by the Commandant of the Marine Corps, and, when assigned to the Navy, by the Commandant of the Coast Guard. The permanent civilian Chairman, the permanent military member, and a third member representing the Bureau, Office, Service, or Headquarters having cognizance over the employee whose case is under consideration, shall constitute a quorum in each case involving an employee suspended under the security program, except

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468

that when the case involves an employee of an activity under the cognizance of the Chief of Naval Operations, such third member will be designated by the Chief of Naval Operations from among the other civilian members with the concurrence of the Chief of the Bureau, Office, Service, or Commandant who nominated the designated member. The Chairman and one other member of the Board may constitute a quorum for review of security determinations not involving employees suspended. An alternate or alternates for any member of the Board may be nominated and appointed as heretofore provided for principal members. Vacancies will be filled by nomination and appointment as heretofore provided for original appointment.

(2) Executive Secretary. The Executive Secretary shall be nominated by the Chief of Industrial Relations and appointed by the Secretary of the Navy. He shall meet the general qualifications prescribed above for board members. He will perform all of the duties customarily performed by an executive secretary, will have immediate charge of all the administrative duties of the Board under the direction of the Chairman, and will have general responsibility for advising and assisting the Board members and exercising executive direction over the staff.

(3) Legal Counsel. The Judge Advocate General of the Navy will designate legal counsel to advise the Board during the course of a review and to furnish such other assistance of a legal nature as may be required. ★

2-9. RESPONSIBILITIES.

a. Office of Industrial Relations.--The Office of Industrial Relations has the following responsibilities in the operation of the security program:

(1) To prepare instructions deemed necessary to implement statutes and executive orders relating to security matters involving civilian employees of the Naval Establishment.

(2) To advise activities of the Naval Establishment on all problems relating to employee security.

(3) To disseminate information pertinent to the employee security program.

(4) To make reports and to submit recommendations to the Civil Service Commission regarding the security program.

(5) To maintain a complete record of all security cases under Executive Order 10450, as amended, in such fashion that such records can be made available to representatives of the Civil Service Commission for inspection and review in connection with the work of the Commission.

(6) When cases are closed, to maintain the complete files in all cases adjudicated under Executive Order 10450, as amended, in such fashion that these files can be made available to the representatives of the Civil Service Commission for inspection and review in connection with the work of the Commission.

(7) To receive from the Civil Service Commission security cases and transmit them to employing activities, ★ ★ with instructions for processing such cases.

(8) To review the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of 21 March 1947, and after such further investigation as may be appropriate, will cause to be readjudicated, in accordance with Public Law 733, 81st Congress, such of those cases as have not been adjudicated under a security standard commensurate with that established under Executive Order 10450, as amended.

★(9) To review security cases, other than those of employees suspended under Executive Order 10450, as required by Executive Order 10450.

(10) To pre-audit proposed charges developed by employing activities in security cases.

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(11) To post-audit files on security cases and to remand for further action those which do not fully meet the security and procedural requirements of the security program. ★

b. Office of Naval Intelligence and District Intelligence Office.

(1) Liaison with other investigative agencies. --The Office of Naval Intelligence and its District Intelligence Offices are responsible for liaison with other investigative agencies of the Federal Government, such as Military Intelligence and the Federal Bureau of Investigation, and for making, or for having made by the Federal Bureau of Investigation, security investigations as requested by Naval activities. The FBI will conduct all security investigations of Navy employees except where the FBI, by special agreement with ONI, makes other arrangements. Accordingly, when an investigative report in the custody of another agency is needed, or when a security investigation on an employee is required for the purposes of this Instruction, heads of Naval field activities will make their requests of appropriate District Intelligence Offices, and Departmental activities will make their requests of the District Intelligence Office, Potomac River Naval Command.

(2) Clearance of individual cases with Office of Naval Intelligence. --Since the Office of Naval Intelligence has certain responsibilities for security, it is necessary that heads of activities, before initiating removal action against an employee, determine whether or not removal action would be prejudicial to investigation under way or planned. The appropriate Intelligence Office will advise as soon as possible whether or not the initiation of removal procedures would be premature. Should any questions arise between Naval activities and Naval Intelligence concerning such cases, they should be referred immediately to ONR Code 110.

(3) Advisory capacity. --The Office of Naval Intelligence and its field activities stand ready to advise heads of activities and members of security screening boards and security hearing boards with respect to the character and nature of subversive and disloyal groups and organizations and their methods and techniques of operation. It is recommended that conferences with appropriate Intelligence Offices for this purpose be arranged. In addition, it is advisable to have members of Security Boards consult with appropriate Naval Intelligence Officers as to the reliability of information contained in confidential reports and the methods employed in securing such information (insofar as security considerations permit), to the end that Boards may form their own opinion as to the propriety of taking action. The Office of Naval Intelligence is a fact-finding body only. It does not draw conclusions for administrative officials, nor does it recommend action to be taken.

(4) Access of Civil Service Commission representatives to investigative reports. --Whenever Civil Service Commission representatives request access to confidential reports used as the basis for removing an employee, such representatives will be instructed to make their requests of the appropriate Naval Intelligence Officers. These Intelligence Officers will provide the Commission representatives with access to complete security files.

(5) Additional investigations and credibility of information. --Whenever information in a particular case is inconclusive or further development of information is desired, a request should be made of the appropriate Naval Intelligence Office, stating the precise information needed.

(6) Furnishing resume of present information in files of FBI: sensitive position. It is the policy of the FBI to furnish the appropriate

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Naval Intelligence Office with a "resume of present information in the files of the FBI" when the FBI initiates an investigation under the security program for a sensitive position and does have information on file. The appropriate Naval Intelligence Office is responsible for making this resume available to employing activities, upon request, for immediate information in advance of the completed investigation. If the resume exists, but is not furnished the appropriate Naval Intelligence Office, the Naval Intelligence Office is responsible for securing the resume from the FBI and furnishing it to the employing activity, upon request.

c. Chiefs of Bureaus and Offices, the Commandant of the Marine Corps, and heads of field activities. --Chiefs of Bureaus and Offices, the Commandant of the Marine Corps, and heads of field activities are responsible for the following:

(1) Initiating action looking toward the removal or clearance of employees under their command in accordance with this Instruction when derogatory information of a security nature is received.

(2) Requesting through appropriate Naval Intelligence Office, security investigations of employees, upon receipt of any information which raises a question as to the security risk involved in their continued employment.

(3) Nominating for appointment to, or appointing, as appropriate, employees as members of Security Boards in accordance with the provisions of NCPI 29.2-5, -6 and -7.

(4) ★ Forwarding to the Secretary of the Navy (OIR Code 110) for pre-audit, proposed charges against employees under the security program. The head of the activity may, in extreme cases which require immediate suspension of the employee, suspend him without submitting proposed charges to the Department for pre-audit. In such instances, the Secretary of the Navy (OIR Code 110) shall be immediately notified of the name of the employee, the employee's rating or grade, the salary, the sensitivity of position, and the facts which required the employee's immediate suspension. Other than in cases of emergency suspension, the head of the activity shall not suspend employees under the security program until he has received information that the Secretary of the Navy has approved the charges submitted to the Department for pre-audit. Upon receipt of such information, the head of the activity shall immediately furnish the employee with the charges and suspend him from employment. The head of the activity must suspend an employee under authority of Public Law 733 at the time he issues charges to the employee under that authority. The head of an activity should not suspend an employee prior to issuance of charges except in cases where the circumstances are such that the retention of the employee in an active duty status may be detrimental to the interests of the Government. In such exceptional cases the employee may be temporarily assigned to duties in which this condition would not exist, or placed on annual leave, provided he has sufficient leave to his credit to cover the required period, placed on leave without pay with his consent, or suspended under Public Law 733 provided that charges are issued within thirty days of the effective date of suspension. No employee will be removed under authority of Public Law 733 and Executive Order 10450, as amended, until the Secretary of the Navy makes his determination on the case. ★

(5) Having the Attorney General's list of organizations, CSC Form 385 (see NCPI ~~29.6-1~~) placed on official bulletin boards. A supply of the printed list is available for this purpose at District Publications and Printing Offices. Activities should

47

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requisition therefrom sufficient copies for posting on official bulletin boards. The Attorney General's list is amended from time to time; such amendments should be requisitioned and posted whenever activities are informed by amendment to NCPI 29 that the list has been amended.

(6) Placing in the employee's official personnel folder (on the permanent side) a signed statement as follows: "Processed under Executive Order 10450, as amended, on (date)," when such action has been completed on his security case. Further, the official personnel folder of an employee upon whom an FBI full field investigation has been received under the security program should contain (on the temporary side) a directive to the personnel officer or the industrial relations officer to notify OIR Code 110 if at any time thereafter the employee is separated for any reason. The notification should state the reason and effective date of such separation.

(7) Notifying OIR Code 110, Navy Department, Washington 25, D. C., immediately of the following action when taken (Report Symbol EXOS-12029-1):

(a) ★ When an employee has been suspended following approval of proposed charges in the Department. The employee concerned must be identified by name, rating or grade, salary, and sensitivity of position. ★

(b) Of cases pending in excess of 60 days, with justification for delay in processing.

(c) Anticipated separation for other reasons (RIF, resignation, etc.) of any employee whose case is pending final decision of the Secretary of the Navy on adverse security recommendation of the activity. This information should be given as far in advance of the effective date as possible.

(d) The date and reason for separation of an employee upon whom an FBI full field investigation has been received and who is thereafter at any time separated for any reason.

(8) Compliance with the appropriate provisions of NCPI 29.

(9) Disposing of files in accordance with the provisions of this Instruction.

(10) Maintaining relationship with the Office of Naval Intelligence in accordance with NCPI 29.2-9b.

(11) Keeping the activity Security Officer informed of all determinations made by the Security Hearing Board and by the activity Commanding Officer, regarding any employee of the activity.

(12) The Civil Service Commission will furnish to employing activities a notice that the FBI has initiated investigation on sensitive positions. The notice, at times, will state that the FBI will furnish a "resume of present information in the file of the FBI" in such sensitive cases, upon request. The head of the activity should request this resume, if required, from the appropriate Naval Intelligence Office (see NCPI 29.2-9b(6)).

(13) Warning employees to recheck the list published by the Attorney General pursuant to Executive Order 10450 (NCPI 29.8-Encl. 4) to make sure they are not associated with any of the organizations cited, and if they are, to discontinue such associations; cautioning employees to check their insurance policies to assure no connection with the above designated list.

(14) Giving proper counsel to their employees concerning the various means by which they may unwittingly expose themselves to unfavorable or suspicious appraisal. Counsel, when given, should be along the line indicated in NCPI 29.8-Encl. 10.

(15) The warning and counseling provisions indicated in 2-9c(13) and (14) will be made a part of the indoctrination training curriculum for all new employees. (See NCPI 230.15-2.)

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d. Security Screening Board. --This Board will have the authority and responsibility to evaluate security cases and make recommendations to the head of the activity as to procedure appropriate in each case. The Board may not issue charges or conduct hearings, but it may, in connection with its evaluation of cases, issue interrogatories, conduct interviews, and prepare proposed charges to be issued by the head of the activity. The Board's recommendations will be signed by all board members, supported by a rationale, and be included in the complete file of the case.

e. Executive Secretary of the Security Hearing Board. --The Executive Secretary is required:

(1) To maintain liaison on security hearing board matters with the Civil Service regional office having jurisdiction in the geographical area of the Naval activity, or with the Office of Industrial Relations in the metropolitan area of Washington, D. C. (NCPI 29.2-7a).

(2) If the Naval activity is one previously requested by OIR to designate officers and employees to security hearing board rosters (see NCPI 29.2-7b) to make a check once every three months of personnel at the activity who have been named to the security hearing board roster to ascertain their availability for hearing board service during the ensuing three months period and to notify the appropriate Civil Service regional office appropriately.

(3) Subject to the introductory condition above, and to the approval of the head of the activity, to obtain replacements from the activity for the security hearing board roster of the Civil Service regional office. Designations of replacements are to be sent directly to the Civil Service regional office, with an information copy to OIR Code 110. Designations will specify that the person named has been the subject of a full field investigation (or a background investigation under Department of the Navy directives) completed with satisfactory results, that the head of the activity personally vouches for his character, ability, discretion and integrity, and that the designation has been determined to be clearly consistent with the interests of national securit

(4) To receive and maintain controls on cases received from the head of the activity for hearing (NCPI 29.2-9f(4)).

(5) To make contact with the Civil Service regional office to obtain members for the security hearing board to hear individual cases, except for those geographic areas stipulated in NCPI 29.2-7. This will involve contact with installations and persons on the roster to ascertain availability and to make arrangements for their participation. It is generally desired that the board be comprised of one military officer and two civilians. Selections should be made so as to minimize travel. Any unusual difficulties in obtaining persons to serve should be reported to the Chief of Industrial Relations (OIR Code 110), informing of the steps which were taken to secure their services.

(6) To complete final negotiations with personnel who are to serve on the security hearing board and to request the employers of each of the board members to issue any necessary travel orders. In so doing, the employers of the board members will be advised of the place where the hearing is to be held and the dates upon which service will be required. Board members should be informed that it is generally necessary for the board to meet in executive session on the day before the hearing and immediately following the hearing, probably on the day after the hearing. The name of the employee whose case is to be heard should not be included in the travel orders so that the orders will not have to be classified.

(7) To assure that all members of the hearing board panel have an opportunity to review the entire case file prior to the hearing.

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(8) To transmit invitations to qualified witnesses in accordance with NCPI 29.4-12f as far in advance of the hearing as possible.

(9) To notify the employee of the time and place of the hearing.

(10) To make all physical arrangements for the hearing at the activity. This action will include at least the following: a hearing room; a witness room (two, if Government witnesses are to appear); stenographic and clerical assistance for the hearing; a mechanical recording device with a qualified operator if necessary; and any other details necessary for the hearing.

(11) If requested by the board, to obtain and make available to the board stenographic and clerical assistance in the preparation of the board's findings and determination.

(12) To assure that the case file is returned promptly from the security hearing board and when received to review to ascertain that all documents are present and that the board's findings have been signed by all board members. The completed case will be transmitted to the head of the activity (NCPI 29.2-9f(4)).

(13) To supply members of the board with statements covering periods of service as a board member.

(14) To take any other action considered necessary in the development of the case and presentation of a complete record to the board.

f. Security Hearing Board of the activity.--A security hearing board is established when needed by the head of the activity in the name of the Secretary of the Navy to conduct hearings, and to act in an advisory capacity to the Secretary of the Navy in making its findings and recommendations. The prime function of a security hearing board in each individual case is (1) to insure that individuals privileged to be employed in the Federal service are reliable, trustworthy, of good conduct, and of complete and unswerving loyalty to the United States; and (2) to afford to the individual being heard fair, impartial, and equitable treatment. Subject to the administrative control of the head of the activity (see (4) below), the responsibilities of a security hearing board in the performance of its duties include the following:

(1) Obtaining information.

(a) The employing activity will make available to the board a complete record of the case. Each board member will familiarize himself with all details in the case.

(b) The board will give every reasonable opportunity to the employee to be heard and to present evidence.

(c) The board, by means of pointed questions, will thoroughly explore all matters at issue and inform the employee of the derogatory information, as fully as security considerations permit, in order that he may clarify, explain, or refute that information.

(2) Safeguarding security.

(a) All board members will be constantly alert to avoid any unauthorized or improper disclosure of information affecting the national security. Board members should be familiar with and abide by the security regulations of the Department of the Navy.

(b) All members of hearing boards, particularly the chairman, are cautioned not to permit disclosure of confidential sources of information or investigative methods, or a line of questioning tending to identify such sources or methods.

(c) Generally, the charges to the employee will indicate the information which may be divulged to him without compromising confidential sources. Boards may elaborate or clarify details of the information, but under no circumstances is the identification of confidential sources permitted.

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(3) Fairness and impartiality.

(a) The board will take whatever action is necessary to insure the employee full and fair consideration of his case at the hearing, as well as in the preparation of the findings and recommendations.

(b) The board members will avoid the attitude of a prosecutor but nevertheless will make sure that all relevant and procurable evidence is adduced for the record.

(c) The board, in making its determination, will take into consideration the inability of the employee to meet charges of which he has not been advised specifically in detail, because of security reasons, or to attack the credibility of witnesses who do not appear.

(4) Security Hearing Boards under the administrative control of the head of the Naval activity and subject to security regulations of the Department of the Navy. --The Security Hearing Board will carry out its assigned duties in accordance with the security regulations of the Department of the Navy and will at all times be under the administrative control of the head of the Naval activity convening the Security Hearing Board. In the event of any conflict between the security regulations of the Department of the Navy and the provisions of Civil Service Handbook 203, GUIDES FOR MEMBERS OF SECURITY HEARING BOARDS UNDER EXECUTIVE ORDER 10450, the security regulations of the Department of the Navy will govern. The Security Hearing Board will submit its letter of decision and memorandum of reasons therefor to the Secretary of the Navy via the head of the Naval activity. Under no circumstances will a copy of the Security Hearing Board's decision or memorandum of reasons therefor be made available to the employee, his counsel or his representative. Copies of transcripts or of any correspondence shall be forwarded to the employee, his counsel or representative only via and with the approval of the head of the Naval activity.

g. Navy Department Security ★ Review ★ Board. -- ★The Navy Department Security Review Board shall review for the Secretary of the Navy all cases, including cases now pending before the Navy Department Security Appeal Board, previously known as the Navy Department Loyalty and Security Appeal Board and the Navy Department Loyalty Appeal Board, of employees suspended under the provisions of Public Law 733 (81st Congress) and Executive Order 10450, in such a manner that maximum protection will be afforded the Navy against employment or retention in employment of civilian personnel whose employment or retention in employment is not clearly consistent with the interests of the national security, while assuring that employees are accorded fair and impartial treatment by the Government. ★ The Board will have the authority and responsibility:

(1) To review cases involving security and to make such advisory recommendations with respect thereto to the Secretary of the Navy as the Board will duly approve.

(2) ★The Board will not review any case until the appropriate administrative procedures have been complied with.

(3) No review will be made by the Board of material or representations submitted in rebuttal to notification that an adverse decision has been made by the Security Hearing Board or that an adverse recommendation is contemplated by the Security Review Board unless the rebuttal is filed with the Board within twenty calendar days (within 30 calendar days in the case of persons living outside the continental limits of the United States) after the employee has been advised by the Review Board of the adverse decision or the contemplated adverse recommendation.

(4) The employee must have submitted all his evidence in hearings below, and a decision must be had thereon before this Board will consider any

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rebuttal submitted by the employee. Cases on review will be considered upon the complete file and on briefs submitted by, or on behalf of, the employee. ★

(5) If the Board, either before, during or after considering a case is of the opinion that further evidence should be taken or amplification of the record should be made below, it may remand the case for reconsideration and for the taking of such further evidence as it may direct.

h. Secretary of the Navy.

★ (1) Secretarial approval of charges prior to suspension. --Except in extreme emergencies requiring immediate suspension, no employee will be suspended until the charges upon which the suspension will be predicated have been pre-audited in the Department and approved by the Secretary of the Navy.

(2) Unfavorable determinations on security. --The authority contained in Public Law 733 to remove an employee in the interest of national security may not be exercised by officials below the Secretarial level. No employee will be removed on security grounds until so directed by an official at the Secretarial level.

(3) Favorable decision at activity following suspension of the employee. --Employees suspended by heads of activities under Public Law 733, 81st Congress, will be restored to duty only at the direction of the Secretary of the Navy, despite the fact that the activity may have made a favorable decision following suspension.

(4) Secretarial review of Hearing Board Rosters. --The Secretary of the Navy periodically reviews the list of persons made available by the Department of the Navy for service on security hearing boards (NCPI 29.2-7g) and for service as Executive Secretary of security hearing board (NCPI 29.2-6b) in order to assure the high caliber of these boards.

(5) Consultation with other agencies. --Whenever the Secretary of the Navy proposes to make an adverse security decision with respect to a person who has been cleared previously in another agency, prompt consultation with the head of that agency will be made to make certain that all relevant information has been given consideration and that the security standard has been properly applied. ★

i. Legal Counsel. --★ Legal counsel, either military or civilian, shall be provided by the Commanding Officer or by the Commandant of the District or River Command (or equivalent command) to assist Security Screening Boards and Security Hearing Boards. ★ It is advisable that such legal counsel be responsible for advising the security screening boards on procedures and for assisting them in drafting charges and official notices. Upon request of Security Hearing Boards, counsel shall be responsible for presenting evidence and arguments on behalf of the Naval activity in security hearings, for examining and cross-examining employees and witnesses, for pointing up the issues involved, and for otherwise advising and assisting the Security Hearing Boards. ★ The legal counsel is also responsible for advising the employee on procedures and of his rights under Public Law 733 (81st Congress) and Executive Order No. 10450, as amended, and the pertinent regulations, where the employee is not represented by counsel. Hearings will not be conducted in a manner similar to criminal prosecutions and it is not required that they be conducted in accordance with judicial processes. Nevertheless, counsel shall use his utmost efforts to protect the interests of the government and the rights of the individual. ★ Legal counsel must meet the same security qualifications for assignment to Security Boards as that prescribed in 29.2-5c for screening board members.

j. Judge Advocate General. --Upon request of the Chairman, Navy Department Security Review Board, the Judge Advocate General will designate one civilian attorney and one alternative civilian attorney in his office to act as legal counsel for the Navy Department Security Review Board. It will be the responsibility of

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such legal counsel to advise the Board during the consideration of an appeal or the course of a review and to give such technical assistance to the Board as may be required.

2-10. RELEASE OF INFORMATION.

a. Progress of program. --No publicity on the progress of the security program may emanate from any source other than the Office of the Secretary of the Navy.

b. Privacy of all security matters. -- From the inception of the security program, it has been the purpose and intention of the Department to retain, so far as possible, privacy in all security hearings, and to carry out all security proceedings fairly and impartially and wholly upon the record as made under the program. At times various unauthorized persons have sought opportunity to discuss matters concerning the security status of some particular employee then under inquiry. All persons engaged in the security program are directed to advise any such inquiring unauthorized person or persons seeking to discuss pending cases, that under the rules of the Navy Department, all such conversations or conferences with such persons with reference to any pending security case or security proceeding are specifically forbidden. ★ The names of individuals separated under the employee security program shall not be released publicly. However, it is recognized that an individual who is separated under the program has the right to volunteer the release of his own name. ★

c. Information with regard to security matters. --Inquiries from persons, other than those of the Executive Branch entitled to information by reason of their official duties, regarding pending or favorably closed security cases will be referred to the Secretary of the Navy (OIR 110). If an employee has been separated as a security risk, replies to requests from outside the Executive Branch for information about that individual may be made by activities but replies must state only that he was separated for reasons relating to suitability for employment in the Department of the Navy. No exceptions may be made except as authorized by the Secretary of the Navy.

d. Confidential status of security cases. --In a memorandum in the F Register of 16 March 1948 (Federal sonnel Manual, Z 1-181) the Presiden directed that employee loyalty recor kept confidential. The same requir applies to security records. Accor when any subpoena or demand or re for information, reports, records or files relative to employees (includin vestigative reports), is received fro sources other than persons of the E tive Branch entitled to such materia reason of their official duties, such poena or demand or request shall be c clined, and OIR Code 110 immediatel notified of such action. This does alter the provision of NCPI 29.4-13. which requires that one copy of the script of hearing be given to the em or his representative upon request.

e. Confidential status of reports. order to protect the sources of conf dential information, it is imperative such reports as are provided by Nav Intelligence and other investigative be kept strictly confidential. Theref great care must be exercised in pre ing a security case to avoid the disclo of a report of sources of informatio no case may reports be disclosed to authorized persons or copies made f field or departmental activities (exc Naval Intelligence Offices). In all c those officials and members of secu boards requiring confidential report the purposes of effectuating this Inst tion will return them directly to the authorized custodians when they hav served their purpose.

2-11. DESIGNATION AND RIGHT COUNSEL.

a. Any employee who is entitled and desires to exercise his right to hearing before a Security Hearing B shall be afforded the right to be rep sented by counsel or representative choice.

b. Any employee desiring to exe his right to such representation shal submit to the Commanding Officer o activity, in writing, the name and a of his counsel or representative and statement that the individual so nam authorized to act for him.

47.

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c. The individual named by the employee as counsel or representative shall be entitled to all notices and documents to which, under NCPI 29, the employee may be entitled.

SECTION 3, STANDARD AND CRITERIA

Paragraph No.
Standard 3-1
Criteria for application of Standard 3-2

3-1. STANDARD.--The standard for the refusal of employment or the removal from employment in the interests of the national security shall be that, based on all the available information, it is determined that employment or retention in employment of the person concerned is not clearly consistent with the interests of the national security.

3-2. CRITERIA FOR APPLICATION OF STANDARD.

a. Information regarding an applicant for employment, or an employee, which may preclude a finding that his employment or retention is clearly consistent with the interests of the national security, shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the employment to the national security:
  (a) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.
  (b) Any deliberate misrepresentations, falsifications, or omission of material facts.
  (c) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.
  (d) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.
  (e) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.
(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.
(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.
(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.
(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

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(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Participation in the activities of an organization established as a front for an organization referred to in subparagraph 5 above when his personal views were sympathetic to the subversive purposes of such organization.

(9) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of or sympathetic to the infiltrating element or sympathetic to its purposes.

(10) Participation in the activities of an organization, referred to in subparagraph 5 above, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(11) Sympathetic interest in totalitarian, Fascist, Communist, or similar subversive movements.

(12) Sympathetic association with a member or members of an organization referred to in subparagraph 5 above. (Ordinarily this will not include chance or occasional meetings, nor contacts limited to normal business or official relations.)

(13) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in subparagraphs 2 through 11 above. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(14) Close continuing association of the type described in subparagraph 13 above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(15) The presence of a spouse, parent, brother, sister or offspring in a nation whose interests may be inimical to the interests of the United States or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives.

(16) Willful violation or disregard of security regulations.

(17) Acts of a reckless, irresponsible or wanton nature which indicate such poor judgment and instability as to suggest that the individual might disclose security information to unauthorized persons or otherwise assist such persons, whether deliberately or inadvertently, in activities inimical to the security of the United States.

(18) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

b. In the Naval Establishment, refusal of any civilian officer or employee, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct, shall be prima facie evidence that the continued employment of such person is not consistent with the interests of national security. Such person shall be immediately suspended from employment under authority of Public Law 733, 81st Congress (see NCPI 29.8-Encl. 5). Subsequent to such suspension, procedures provided in NCPI 29.4-9 through -16 shall be followed.

c. The activities and associations listed in a above are of varying degrees of seriousness. Therefore, the ultimate determination of whether employment or retention in employment is clearly consistent with the interests of national security must be an over-all common-sense one based on all available information.

4-7-1

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SECTION 4, PROCESSING OF CASES

	Paragraph No.
Initial consideration	4-1
Responsibility for consideration	4-2
Securing additional information	4-3
Initial consideration; determination without hearing	4-4
Action in cases of applicants where initial consideration indicates that a finding of refusal of employment on security grounds may be warranted	4-5
Action in cases of appointees where initial consideration indicates that a finding of removal on security grounds may be warranted	4-6
Action in cases of employees where initial consideration indicates a favorable finding on security may be warranted but action on suitability grounds is indicated	4-7
Action in cases of incumbents where initial consideration indicates that temporary reassignment or detail may be desirable	4-8
Action in cases where initial consideration indicates that security is not a paramount consideration but action under other more appropriate authority is indicated	4-9
Action in cases of incumbents where initial consideration indicates that a finding of removal on security grounds may be warranted	4-10
Determination of case after suspension and charges	4-11
Hearing before Security Hearing Board of the activity	4-12
Conduct of hearings	4-13
Determination after hearing	4-14
Security Hearing Board findings and subsequent action thereon	4-15
Action by Navy Department Security Review Board	4-16
Action by Secretary of the Navy	4-17
Notification to individual	4-18

4-1. INITIAL CONSIDERATION. -- Security cases will be considered initially at the activity employing the subject of a security case. The first step is the screening of the case by the Security Screening Board of the activity to recommend, on the basis of review of the material received and the Civil Service status of the person concerned, the appropriate action to be taken in the case. The head of the activity will make a decision on the recommendation as to subsequent action.

4-2. RESPONSIBILITY FOR CONSIDERATION.

a. All cases of incumbents, appointees and applicants in which an FBI full field investigation report is received will be referred for consideration to the activity Security Screening Board, which will take appropriate action. Action will be taken on every case, whether or not it is deemed sufficiently derogatory to warrant adjudicative action. The Board will make a recommendation to the head of the activity, who will make the decision in every case. ★Executive Order 10550 amended Section 14 of Executive Order 10450 (NCPI 29.8-Encl. 1) to the effect that each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to full field investigation under the provisions of Executive Order 10450, advise the Civil Service Commission as to the action taken with respect to such officer or employee. The Chief of Industrial Relations is responsible for making such reports to the Civil Service Commission. So that this may be done, it is essential that activities adjudicate full field investigation reports on employees within sixty days of receipt of the reports and forward the complete file to the Chief of Industrial Relations (OIR Code 110) in accordance with the requirements of this section. If for any reason adjudication cannot be made within sixty days activities shall comply with NCPI 29.2-9c(7)(b).★

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b. In cases in which the Federal Bureau of Investigation when forwarding reports of investigation points out that there is a report outstanding which has been scheduled at a particular place and that such report of investigation will be transmitted upon completion, no adjudicative action should be taken until such report is received or until the FBI advises that such investigation cannot be conducted for stated reasons. However, if the activity should receive a case of this type in which the facts at hand and the position involved clearly indicate that prompt adjudicative action should be taken, the head of the activity should inform the Chief, Investigations Division, U. S. Civil Service Commission, Washington 25, D. C., via Naval Intelligence, in order that steps may be taken to expedite the outstanding report. In exceptional cases, the Security Screening Board may proceed with adjudication without benefit of the outstanding report if such action is considered necessary.

c. ★Frequently, the Civil Service Commission furnishes only an FBI memorandum report (or information in lieu thereof), which is transmitted by USCSC Form DI 209. This type of report is based on an FBI check and may or may not include investigation reports. In either case, it is not to be considered identical with the results of a national agency check or a full field investigation. The memorandum report (or information in lieu thereof) will be processed as follows:★

(1) Transmittal of FBI Memorandum Report, USCSC Form ★DI 209 on Incumbent.--This form is self-explanatory, and the actions required by it are the responsibility of the employing activity.★ If the head of the activity decides, either upon the recommendation of his security screening board or his own review of the FBI memorandum report, that a full field investigation is required in the case, he should submit a request to the FBI, via the District Intelligence Officer, stating as precisely as possible why he believes that a full field investigation is necessary. He may defer further action pending receipt of the full field investigation, or, if the memorandum contains particularly derogatory information, proceed immediately as outlined in b above. If the head of the activity decides that the FBI memorandum report is not seriously derogatory, and that a full field investigation is not required, he should place a signed statement in the employee's official personnel folder (on the permanent side) as follows: "Processed under Executive Order 10450, as amended, on (date)." Any of the above actions taken should be reported to OIR Code 110 and investigative material transmitted by OIR should be returned to OIR. ★The report of action will indicate whether a full field investigation is required.★ If the subject of the FBI memorandum report is no longer employed at the time the report is received, it should be returned to OIR Code 110 with a statement as to the date and reason for separation of the employee.

(2) Transmittal of FBI Memorandum Report, ★USCSC Form DI 209 on Applicant or Appointee.--If the applicant is appointed or the appointee is retained, the case should be processed in accordance with NCPI 29.8-Encl. 11 or 12, as appropriate. If a full field investigation is required, the head of the activity should address his request for such investigation to the Chief, Investigations Division, U. S. Civil Service Commission, Washington 25, D. C., via the District Intelligence Officer, stating as precisely as possible why he believes that a full field investigation is necessary. Any action taken, as outlined above, should be reported to OIR Code 110 with return of the investigative material transmitted by OIR. The report of action will indicate whether or not a full field investigation is required. If, upon receipt of the memorandum report, the applicant is no longer being considered for employment or the appointee has been separated from

48

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the rolls, the memorandum report should be returned to OIR Code 110 with, in the case of the separated appointee, the reason for the separation and the effective date. ★

d. When a supplemental report is received in a case that was decided under the former loyalty-security standard, the complete file must be reviewed in the light of the current security standard, as well as the information contained in the supplemental report of investigation. The head of the activity will borrow from the District Intelligence Office the complete previous file. The original record will be carefully examined by the Security Screening Board in order to evaluate properly the relevance and materiality of the additional facts in the supplemental reports. The Board will make its recommendation to the head of the activity after a careful examination of the augmented record in the light of the current security standard. The head of the activity will make a decision in the case.

e. In view of the responsibility of the Navy Department to maintain a continuous vigilance in the administration of the security program under Executive Order 10450 it is necessary to review cases based on full field investigations formerly adjudicated under the standard of Executive Order 9835 when the person concerned receives a new appointment in the Naval Establishment. In these cases, Security Screening Boards will carefully review the complete file in the light of the current security standard and consider the cases anew in accordance with this Instruction.

f. It is advisable that the head of the activity provide for the board a representative of the activity (a legal officer, if practicable), who, subject to the direction of the Board, will assist in the preparation of charges when warranted.

4-3. SECURING ADDITIONAL INFORMATION.

a. The Security Screening Board will examine the report of investigation and may request further investigation if such action appears to be necessary. Whenever practicable, such request will be specific as to the additional information required. Security Screening Board members should, when required, be informed in the techniques and activities of the Communist Party and of each Communist, subversive, or totalitarian group or organization which may be involved in the case being considered. Board members should consult for this purpose with the appropriate Naval Intelligence Office in accordance with NCPI 29.2-9b(3).

b. If, in connection with the consideration of the report of the Federal Bureau of Investigation, the Security Screening Board deems it necessary to seek further corroboration or amplification with respect to confidential evidence submitted, the Board is authorized to communicate with the Federal Bureau of Investigation via the District Intelligence Office, identifying the particular case and the particular evidence involved, and indicating as specifically as possible the points of corroboration or amplification which the Board deems necessary to the proper determination of the case. Upon receipt of such a request, the Federal Bureau of Investigation will give immediate and proper consideration and will report thereon to the Security Screening Board.

c. The Attorney General has advised that where it is necessary to designate sources of information as confidential, the Federal Bureau of Investigation will evaluate or furnish the basis for the evaluation of such sources. Officials of the Federal Bureau of Investigation will be available to advise Security Screening Boards as to the reliability of confidential informants. Special Agents of the Federal Bureau of Investigation will testify before Security Screening Boards where they are in a position to furnish competent evidence. They will not, however, participate otherwise in the proceeding, nor will they be available merely to interpret information appearing in their investigation reports.

d. Security Screening Boards must contact the FBI only through the District Intelligence Office for all purposes above indicated.

e. If the Security Screening Board deems it advisable or necessary to obtain information or clarification of certain

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matters from an individual whose case is before the Board, prior to reaching a recommendation as to whether the case should be closed favorably, whether charges should be made, or further investigation should be requested from the Federal Bureau of Investigation, the individual may be given the opportunity, if he so desires, to answer questions by written interrogatories issued by the Board. Replies to such interrogatories must be signed and notarized. The procedure outlined in NCPI 29.4-10a(8) may also be used in issuing interrogatories. This Instruction provides for Security Screening Boards to secure from employees additional information by means of interrogatories prior to reaching a conclusion. The limited use of interrogatories provides a method whereby

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a Board may clarify minor matters. ★ However, the interrogatory should not be used as a substitute for an interview. ★ This Instruction does not contemplate the use of interrogatories as a means of confronting an individual with information seriously derogatory ★, nor shall the interrogatory be used for this purpose. ★ This Instruction provides for issuing charges in cases in which a finding clearly favorable is not warranted.

f. The names of non-confidential witnesses or informants disclosed in Federal Bureau of Investigation reports of investigation are not to be included in notices of charges or interrogatories served on the employee. Confidential sources of information and the identity of confidential witnesses referred to in the reports will not be disclosed to any person not officially connected with the adjudication of the case.

g. An interrogatory concerning association with alleged Communists should not be made unless the Security Screening Board has been first furnished with sufficient factual information, both with respect to the claimed association and the allegation that the persons with whom the employee is charged with association are Communists, so that the Board may intelligently reach a fair conclusion thereon. Boards should take care that the surrounding factual data relating to assertions with respect to employee relations and actions are sufficiently developed in the record, prior to the issuance of interrogatories, so as clearly to assist the Board in reaching a fully considered recommendation.

h. Security Screening Boards are authorized to interview anyone in the personnel complement of the activity including the subject of a security case. In such cases the Board should request that the employee testify under oath, although it must be understood that he is within his rights if he refuses to testify at all or is willing to give only unsworn testimony. The chairman of the Security Screening Board is authorized to administer the oath for this purpose. It should also be understood that the interview is an informal, investigative procedure, not a hearing. Interviews should be conducted in a manner designed to insure the security of confidential information and sources of information. It is advisable to consider beforehand the objectives of the proposed interview to be sure it will accomplish its purposes. The interview should not be used in place of the interrogatory unless circumstances indicate that an interview would be more effective. ★ However, an interview may be extremely useful in resolving questions of fact and intent, and is preferred to an interrogatory in such instances. ★ A verbatim record should be made of every interview conducted by a security screening board and a copy of the interview must be made a part of the complete administrative file of the case.

4-4. INITIAL CONSIDERATION; DETERMINATION WITHOUT HEARING.

a. The Security Screening Board will consider the reports of investigation in the light of the security standard and criteria (NCPI 29.3). The Board will determine whether such reports warrant a recommendation clearly favorable to the individual or appear to call for further processing of the case with a view to possible removal action (or denial of employment). ★ A determination favorable to the individual shall not be based on a premise that continuance of his employment will be of value to the national defense despite existing security factors surrounding his case. ★

b. If the Security Screening Board reaches a clearly favorable conclusion, it shall state: "based on all the available information, it is recommended that the (head of the activity) find that (employment or retention in employment) of the person concerned is clearly consistent with the interests of the national security." The recommendation must be in five copies and all copies must be signed by all board members. Each copy of the recommendation must have attached a rationale, signed by all board members, setting forth the reasons for the recommendation. All copies of the rationale and the recommendation will be submitted to the head of the activity. The interrogatory (if used) and the reply thereto and the verbatim transcript of the interview (if used) must accompany these papers and also be in five copies. The

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FBI reports and any allied papers furnished the activity by OIR to be adjudicated by the activity under the security program will be forwarded to the head of the activity with the recommendation, but only in the number of copies furnished by OIR. These reports may not be reproduced by any activity of the Naval Establishment except Naval Intelligence activities.

c. The head of the activity will make a decision on the recommendation. ★ The decision will specify in each case the sensitivity of the position involved. If the head of the activity concurs with the board's recommendation his decision will be: ★ "based on all the available information, it is my decision that (employment or retention in employment) of the person concerned is clearly consistent with the interests of the national security." The decision must be in five copies and all copies must be signed by the head of the activity. The head of the activity will then forward the original copy and one carbon copy of each administrative action taken to OIR, attention OIR Code 110, and return therewith the FBI reports and allied papers originally furnished by OIR. The three remaining carbon copies of each administrative action taken by the activity will be disposed of as follows: One set to ONI (Op 921D), Navy Department, Washington 25, D. C., one set to the appropriate District Intelligence Office; and, one set to the confidential file of the activity.

d. If the Board recommends adversely to the person concerned but the head of the activity does not accept the recommendation the head of the activity will proceed in accordance with c above. However, he must incorporate into the administrative file his rationale of reasons for not accepting the board's adverse recommendation.

e. If the Security Screening Board recommends favorably to the person concerned but the head of the activity does not accept the recommendation he should proceed in accordance with NCPI 29.4-5, -6, -7, -9. or -10 below, as appropriate.

f. If the Security Screening Board recommends and the head of the activity decides that the reports do not warrant a finding clearly favorable to the person concerned the procedures of NCPI 29.4-5, -6, -7, -8, or -9, as appropriate, will be followed.

★ g. All violations of law, as disclosed in the investigations and proceedings under the security program, shall be reported immediately to the Office of the Judge Advocate General of the Navy, with information copy to OIR Code 110. ★

4-5. ACTION IN CASES OF APPLICANTS WHERE INITIAL CONSIDERATION INDICATES THAT A FINDING OF REFUSAL OF EMPLOYMENT ON SECURITY GROUNDS MAY BE WARRANTED.

a. The Security Screening Board will consider the reports of investigation in the light of the security standard and criteria (NCPI 29.3). If the applicant does not meet the requirements the Board will recommend to the head of the activity that the applicant not be employed. The head of the activity, if he accepts the recommendation, will refuse employment to the applicant and the case will be considered closed. The complete file will be disposed of in accordance with NCPI 29.4-4c.

4-6. ACTION IN CASES OF APPOINTEES WHERE INITIAL CONSIDERATION INDICATES THAT A FINDING OF REMOVAL ON SECURITY GROUNDS MAY BE WARRANTED.

a. The Security Screening Board will consider the reports of investigation in the light of the Standard and Criteria, and if the appointee does not meet the requirements, will recommend to the head of the activity that the appointee be removed. If the head of the activity approves the recommendation he will separate the appointee administratively. (See NCPI 45 and NCPI 210.) The complete file will be disposed of in accordance with NCPI 29.4-4c.

4-7. ACTION IN CASES OF EMPLOYEES WHERE INITIAL CONSIDERATION INDICATES A FAVORABLE FINDING ON SECURITY MAY BE WARRANTED BUT ACTION ON SUITABILITY GROUNDS IS INDICATED.

a. The Security Screening Board may recommend favorably on security grounds, but suggest action on suitability grounds

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under other authority more appropriate to the case than Public Law 733 and Executive Order 10450. The head of the activity will make a decision in the case on the recommendation, and when final action is taken dispose of the complete file in accordance with NCPI 29.4-4c.

4-8. ACTION IN CASES OF INCUMBENTS WHERE INITIAL CONSIDERATION INDICATES THAT TEMPORARY REASSIGNMENT OR DETAIL MAY BE DESIRABLE.

a. Upon approval of the Commanding Officer, an employee holding a sensitive position may be reassigned or detailed temporarily, pending completion of investigation or pending a determination that his suspension under E. O. 10450 is required, to a non-sensitive position in which the interests of the national security cannot be adversely affected by the employee, provided that ameliorating circumstances are present and the derogatory information disclosed is not of the character set forth in sub-divisions 2 through 8 of subsection (a) of Section 8 of E. O. 10450 (NCPI 29.7-Enclosure (1)). Commands will advise the Secretary of the Navy (OIR Code 110) by letter of the circumstances surrounding each temporary reassignment or detail made in accordance with the foregoing instructions. This information, when received in the Department, will be reviewed to insure that the temporary reassignment or detail is clearly consistent with the interests of the national security.

4-9. ACTION IN CASES WHERE INITIAL CONSIDERATION INDICATES THAT SECURITY IS NOT A PARAMOUNT CONSIDERATION BUT ACTION UNDER OTHER MORE APPROPRIATE AUTHORITY IS INDICATED.

a. The Security Screening Board may recommend that the case does not warrant processing under security procedures but that other more appropriate procedures apply in the case. The head of the activity will make a decision in the case on the recommendation and when final action is taken in accordance with his decision, he will dispose of the complete file in accordance with NCPI 29.4-4c.

4-10. ACTION IN CASES OF INCUMBENTS WHERE INITIAL CONSIDERATION INDICATES THAT A FINDING OF REMOVAL ON SECURITY GROUNDS MAY BE WARRANTED.

a. In all incumbent cases in which the evidence indicates that removal on security grounds may be warranted, the Security Screening Board will so recommend, and furnish the head of the activity with proposed charges. It is conceivable that some cases may contain not only derogatory information of subversive nature but also derogatory information which would call into question suitability or justify disciplinary action. It is desirable in such circumstances that where an employee is charged with a series of charges under this section, no charges be included which may be appropriate for handling as a disciplinary or suitability matter, if in the opinion of the command exclusion of such charges will not compromise the security case against the individual. Exclusion of charges which are of a disciplinary or suitability character from security charges will permit later action by command, if desired, under the procedures of NCPI 45 (see NCPI 29.6) in the event the Secretary of the Navy makes a finding on the security charges favorable to the employee. The names of non-confidential witnesses or informants disclosed in Federal Bureau of Investigation reports of investigation are not to be included in the charges. Confidential sources of information and the identity of confidential witnesses referred to in the reports will not be disclosed to any person not officially connected with the adjudication of the case. If the head of the activity accepts the adverse recommendation of the Security Screening Board he will have charges against the employee prepared. The proposed charges shall be immediately forwarded to the Secretary of the Navy (OIR Code 110) for pre-audit prior to issuance of charges to the employee, except in those instances where the circumstances are such as to make immediate issuance of the charges essential to the best interests of the national security. ★ The proposed charges should be accompanied by the complete report

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the security screening board, including the rationale of the members, interrogatories issued and replies received, transcripts of personal interviews, investigative reports, and such comments as the head of the activity may desire to make. To insure the adequacy of review of proposed charges in the Department, the proposed charges shall be reviewed in the Office of Industrial Relations, in the Office of the Judge Advocate General of the Navy, and in the Office of the Secretary of the Navy. ★ This Instruction is not to be construed as curtailing Command's prerogatives to immediately suspend an employee whose continued employment is not considered to be clearly consistent with the interests of the national security, but rather as a means of furnishing commands with proper guidance to insure that Navy's obligations under the security program are effectively discharged. The Instruction in 29.2-9c(4) must be observed when circumstances require that charges be issued without preaudit in the Department. The statement of charges should be in six copies: the original for the employee, the balance to the complete administrative file. The charges will give the employee the following information:

(1) The charges against him in detail, setting forth with particularity the facts and circumstances relating to the charges so far as security considerations will permit, in order to enable the employee to submit his answer, defense or explanation. Each charge will be preceded by and directly related to one or more of the specific criteria set forth in NCPI 29.3-2.

(2) His right to answer the charges in writing, under oath or affirmation, and to submit affidavits, within thirty full calendar days of his receipt of the notice of charges (plus an additional thirty days if the charges are amended).

(3) His right to have an administrative hearing on the charges before the Security Hearing Board, upon his request.

(4) His right to appear before such Security Hearing Board personally, to be represented by counsel or representative of his own choosing, and to present evidence in his behalf, provided, however, that the attorney or representative shall not be an attorney or employee of the general counsel's office or legal division of the activity. As a part of item (4) the employee will be advised as follows:

"IMPORTANT NOTICE TO THE EMPLOYEE

"Any and all evidence which you desire to submit in connection with the matter under consideration should be submitted at the hearing before the Security Hearing Board. No additional testimony may ★, as of right, ★ be introduced into the record for any subsequent review, ★ unless it is ★ in the form of a notarized affidavit. ★ Acceptance of the additional testimony will be subject to the ★ discretion of the Navy Department Security Review Board. It is essential, therefore, that you take care to present all of your evidence, including your own testimony, at the hearing before the Security Review Board if you wish the same to be thereafter considered in the event of an appeal."

(5) The effective date of his suspension.

(6) The fact that removal action will not become effective until directed by the Secretary of the Navy.

(7) The authority or authorities (Executive Order 10450, as amended, and Public Law 733, plus any applicable statutes, such as Section 9A of the Hatch Act, under which the notice is being sent.

(8) The activity may adopt the practice of furnishing a copy of the Attorney General's list whenever an employee is given charges, and of asking a question designed to elicit information as to the individual's membership or affiliation with any organization appearing on such list. If the activity decides to follow

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this procedure, it is suggested that there be inserted in the letter of charges, probably as the last point, the following: "Attached hereto is the list of organizations which have been designated to date by the Attorney General of the United States as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of Government of the United States by unconstitutional means.

"Are you now or have you ever been a member of, or in any manner affiliated with the Communist Party, U.S.A.? YES OR NO.

"Are you now or have you ever been a member of or in any manner affiliated with any of the other organizations on the attached list? YES OR NO.

"If either answer is "YES"give complete details of your membership in or affiliation with each organization including (1) the name and location of each such organization, (2) the nature and extent of your activities therein, (3) the approximate dates of your membership or affiliation (4) the titles of any positions or offices held by you in each such organization and (5) such other information as you may consider necessary."

(9) A statement advising the individual that deliberate misrepresentations, falsifications or omission of material facts may constitute sufficient basis for removal.

(10) That a copy of NCPI 29 will be made available to him or his counsel or representative, upon request, to prepare his defense.

(11) A statement advising the employee of the following information: "The Navy is conscious of its dual responsibility in security matters, both as guardian of classified information essential to the nation's security and as the employer of one of the nation's largest groups of devoted and loyal public servants. It is to the Government's interest as well as your own that your case be presented properly and fully and not be handicapped because of lack of legal counsel. The full development of all the facts is essential to a final decision in your case. This provides protection for the individual's rights as well as those of the Government and carefully preserves our traditions and basic rights of our citizens. In keeping with this premise, the American Bar Association has made its services available to any employee who has been issued charges under the security program. Should you so desire you may contact the local office of the American Bar Association in an effort to obtain competent counsel. You are further advised that in the event you produce evidence to the Bar Association which indicates that you cannot afford the necessary counsel fees, the Bar Association may, in its discretion, make available to you cost-free counsel. The provisions concerning designation and rights of counsel contained in NCPI 29.2-11 will be applicable in the event counsel is selected by you through the medium of the American Bar Association."

b. After an employee has been suspended under Public Law 733, he may be permitted, if he so requests, to use annual leave to his credit at the date of suspension in lieu of remaining in a leave without pay status, with the then understanding that, if he subsequently is reinstated, the annual leave so used will be restored to his credit in lieu of the payment of compensation for the period involved. (Comp. Gen. Decision B-106914 of 11 December 1952.) Granting such leave is optional with the head of the activity. It should not be granted, however, if the case appears to fall within the purview of Section 9A of the Hatch Act.

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4-11. DETERMINATION OF CASE AFTER SUSPENSION AND CHARGES.--After giving an employee charges, the activity will proceed as follows:

a. If the employee does not reply within the time specified by the activity, the head of the activity will consider the case on the complete file, and make a decision in terms of the standard and forward the complete file in accordance with NCPI 29.4-4c. However, no inference or presumption should be assumed because of the failure or refusal of an employee to reply to an interrogatory or notice of charges.

b. If the employee does not reply but if he or his counsel or representative requests a hearing before the Security Hearing Board, he shall be granted such, in accordance with d below.

c. If the employee answers in writing but does not request a hearing, the head of the activity will consider the case on the complete file (including such answer), make a decision in terms of the standard and forward the complete file in accordance with NCPI 29.4-4c. Before making the decision, however, the head of the activity at his discretion may, if a hearing is deemed necessary, request the employee to appear for a hearing, but he cannot require him to appear, and no inference or presumption should be assumed because of the failure or refusal of an employee to appear for a hearing.

d. If the employee requests a hearing before the Security Hearing Board, the head of the activity will refer the entire case to the Executive Secretary of the Security Hearing Board of the activity for action in accordance with the responsibilities of the Executive Secretary (NCPI 29.2-9e). The head of the activity will issue orders establishing the Security Hearing Board, in accordance with NCPI 29.2-7, and he shall in his order name the chairman of the board.

4-12. HEARING BEFORE SECURITY HEARING BOARD OF THE ACTIVITY.

a. Scheduling a hearing.--If the employee requests a hearing before the Security Hearing Board, a time and place for such hearing will be set by the Executive Secretary as convenient to him as circumstances permit, and he will be allowed a reasonable time to assemble his witnesses and prepare his defense. The employee will be advised in writing of the scheduled hearing; the letter to the employee will contain the quoted material cited in NCPI 29.4-10a(4).

b. Convening the Security Hearing Board.--Operations of a security hearing board convened to hear the case of a Navy employee will be under the administrative jurisdiction and control of the head of the Naval activity employing the subject of the hearing, regardless of the composition of the board or the command jurisdiction of the board members. The Board will be subject to the regulations of NCPI 29 (NCPI 29.2-9f(4)). The head of the activity will issue appropriate orders naming and convening the security hearing board for each case in which the employee concerned has requested a hearing upon receipt of charges. The orders will specify clearly that the board is a duly constituted agency authority convened by order of the Secretary of the Navy under authority of Public Law 733, 81st Congress, and Executive Order 10450. This Instruction will serve as notification of delegation of the foregoing authority to heads of activities to name and convene the security hearing board in the name of the Secretary of the Navy. The orders will name one of the board members as Chairman of the Board for each case. Security hearing boards will be composed of not less than three persons (preferably one military officer and two civilians) of activities of the Federal Government other than activities of the Navy Department, selected by the activity for which the hearing is to be held.

(1) Members of hearing boards will be selected by the activity for which the hearing is to be held in the manner stated in NCPI 29.2-7.

(2) No officer or employee of the Naval Establishment shall serve as a member of a hearing board in the Naval Establishment except as specified in NCPI 29.2-7.

(3) The head of the activity for which the hearing is to be held will issue the necessary orders convening a board. A sample order appears in NCPI [illegible]

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(4) A board member shall disqualify himself in any case in which he is acquainted with the employee.

(5) One member of the board will be designated as chairman by the head of the activity. The chairman will be in full charge of the proceedings and will be responsible for the efficient conduct of the hearing.

(6) The activity that establishes the board may not reimburse the agencies that employ the board members for their salaries, travel, or other expenses. The Comptroller General, in decision B-115113 of 26 May 1953 ruled that the cost of furnishing members of hearing boards "is a necessary expense of the agencies furnishing the employees."

c. Pre-hearing Procedure; availability of case file.

(1) The case file will be made available to security hearing board members by the Executive Secretary of the activity concerned in advance of the hearing.

(2) Board members are responsible for safeguarding each file made available to them.

(3) Unauthorized persons must not be permitted to have access to the file, and its contents must not be discussed with such persons.

d. Study of case file.

(1) Each board member will make a careful study of the case file prior to the hearing.

(2) Board members must be informed in the techniques and activities of the Communist Party and of each Communist, subversive, or totalitarian group or organization which may be involved in the case to be heard. See NCPI 29.2-9f(3). If a board member is not satisfied with the information available concerning any such organization as contained in the file, he will request the Executive Secretary to obtain necessary additional information.

e. Study of Navy security regulations. Board members will familiarize themselves with the security regulations of the Department of the Navy (NCPI 29.2-9f(4)). They will also study the provisions of the act of 26 August 1950 and Executive Order 10450, as amended.

f. Inviting witnesses.

(1) Generally, the Executive Secretary will have invited the witnesses.

(2) In addition, the security hearing board, in its discretion, may invite any person to appear at the hearing and testify.

(3) Special Agents of the Federal Bureau of Investigation may be invited, and will be made available, to testify whenever they are in a position to furnish competent evidence. Special Agents will not, however, participate otherwise in the proceedings, nor will they be made available merely to interpret information appearing in their investigative reports.

(4) All invitations will be extended, if possible, a reasonable time in advance of the hearing to afford witnesses a reasonable opportunity to attend.

(5) Invitations will state the time and place of the hearing and will state that the board cannot pay witness fees or reimbursement for travel or other expenses.

(6) Invitations by letter, duly posted, will be sufficient.

g. Rights of the employee.

(1) It is the responsibility of the board to make sure, within a reasonable time prior to the hearing, that the employee has been informed of his right (1) to participate in the hearing, (2) to be represented by counsel of his choice, and (3) to present witnesses and offer other evidence in his own behalf and in refutation of the charges brought against him.

4-13. CONDUCT OF HEARINGS.

a. General.

(1) Hearings before Security Hearing Boards will be conducted in an orderly manner, and in a serious, business-like atmosphere of dignity and decorum, and will be expedited as much as possible.

(2) Not less than three members will be present at all stages of the hearing.

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(3) The conduct of the board members will be characterized by fairness and impartiality.
(4) The board chairman will be in full charge of the proceedings and is charged with the responsibility for the efficient conduct of the hearing.
(5) Whenever the employing agency is represented by an attorney-advisor, he may assist the board by questioning witnesses.
(6) All persons connected with the hearing, particularly the Chairman, are cautioned against permitting reading from the investigative report, to the employee or his counsel, or quoting in any other manner passages from the report to the employee or his counsel.

b. Privacy of hearings.
(1) All hearings will be private.
(2) Only the following will be present:
(a) Members of the Board.
(b) The employee and his counsel.
(c) Agency employees concerned.
(d) The stenographer or stenographers.
(3) A witness will be present only when he is actually testifying.

c. Manner of opening hearings.
(1) Hearings will be opened by the reading of the letter setting forth the charges against the employee, and the statements and affidavits made by the employee in answer to such charges. All of these will be included in the transcript.
(2) The employee will be informed by the board of his right (1) to participate in the hearing, (2) to be represented by counsel of his choice, (3) to present witnesses and to offer other evidence in his behalf and in refutation of the charges brought against him, and (4) to cross-examine any witnesses offered in support of the charges.
(3) The introductory statement will include a statement to the effect that the transcript of the hearing will not include all material in the file of the case, in that it will not include reports of investigation, which are confidential; also, that it will not contain information concerning the identity of confidential informants or information which would reveal the source of confidential evidence; and that it will contain only the evidence and testimony actually taken at the hearing.
(4) The employee or his counsel or representative will be entitled to inspect the transcript and, upon request, will be furnished with a copy of the transcript, subject to restriction of paragraph (3) above, and NCPI 29.2-9f(4).
(5) A sample opening statement is attached as NCPI ~~29.5-8.~~ 7

d. The stenographic record.
(1) A complete verbatim stenographic transcript will be made of the hearing by a qualified reporter, and the transcript will constitute a permanent part of the record.
(2) The Board will exercise precaution to insure that the transcript is a true and accurate record of the proceedings.
(3) An exception will be made when a witness who testifies before the Board is not willing to testify in the presence of the employee and his counsel. In this event, such testimony will not appear in the transcript, but will be a part of the complete record of the case.

e. Administering the oath.
(1) Testimony will be given under oath or affirmation. The Executive Secretary of the Security Hearing Board, or person designated by command to act for the Secretary in his absence, is hereby authorized to administer oaths for this purpose, in accordance with the provisions of 5 USC 16a.

f. Avoiding improper matters.
(1) Strict legal rules of evidence will not be binding on the Board, but reasonable restrictions will be imposed as to the relevancy, competency, and materiality of matters considered.
(2) All possible care will be used not to inject into charges, hearings, or any other phase of a security proceeding, matters relating to the individual whose case is under

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consideration which are improper or incompetent, or which are not relevant to the determination of the individual's status with regard to the national security.

(3) As an example of matters that must be avoided to comply with provisions of law and basic rules of the Civil Service Commission, discrimination shall not be exercised because of an employee's religious opinions or affiliations, or because of his marital status or his race, or, except as may be required by law, because of his political opinions or affiliations.

(4) In view of these fundamental requirements, the board will make sure that any material prepared, and questions asked at hearings, are free from any reference that might be construed as improper.

(5) Throughout the proceedings and subject to the security restrictions necessarily imposed, every effort will be made to aid the individual to secure a full and fair consideration of the matter under consideration.

(6) Boards are not empowered to pass upon so-called legal or constitutional objections to the procedure under the security program. The board will in no case permit lengthy argument or diverse motions relative to the legality or propriety of the hearing and other procedures of the board with resulting loss of time and delay caused by the consideration given to such motions. Submission of such motions before the board will be confined to the filing of written motions or objections to be made part of the file. No oral arguments on them will be permitted, nor will the board undertake to consider or decide any such motion or contention.

g. Testimony and cross-examination.

(1) While hearing boards may invite any person to appear at the hearing and testify, they will not be bound by the testimony of such witnesses by reason of having called them. The board will have full right to cross-examine them.

(2) If a person who has made charges against the employee and who is not a confidential informant is called as a witness but does not appear, his failure to appear will be considered by the board in evaluating such charges, as well as the fact that there can be no payment by the Government for travel of witnesses.

(3) Both the Government and the employee may introduce such evidence as the board deems proper in the particular case.

(4) The employee or his counsel will have the right to control the sequence of such witnesses as shall be offered by or on behalf of the employee; the board, in its discretion, will control the sequence of other witnesses.

(5) Reasonable cross-examination by the employee or his counsel will be permitted.

(6) The hearing board will give due consideration to documentary evidence developed by investigation, including party membership cards, petitions bearing the employee's signature, books, treatises or articles written by the employee, and testimony by the employee before duly constituted authorities. The fact that such evidence has been considered will be made a part of the transcript of the hearing.

h. Security standards.--See NCPI 29.3.

i. Types of information and its evaluation.--The information to be considered by the security hearing boards can be grouped into three categories: Documentary, testimony of witnesses and informants, and testimony of the employee.

(1) Documentary.

(a) Examples of documentary information are party membership cards, petitions bearing the individual's signature, books, treatises or articles written by the employee, voting registration, official correspondence, announcements of sponsored meetings, and police and court records.

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49

(b) For the purpose of this program, documentary information includes not only the actual papers, books, lists and other written instruments and photostatic copies of such written instruments but also, when circumstances prevent obtaining such written instruments, statements from entirely reliable sources that such instruments were in existence and had been examined.

(c) Documentary information properly authenticated will be accepted as being reliable unless the employee can furnish clear and affirmative proof to the contrary. His mere denial of such information will not be sufficient to warrant questioning the information. Such denial on his part may give rise to a question of his credibility.

(2) Testimony of witnesses and informants.

(a) In evaluating information furnished by witnesses, including those appearing at the hearing, the board will consider how well the individual furnishing the information knew the employee, the nature of their relationship, the period involved, or, in other words, whether or not the witness has been in a position to know or has had an opportunity to learn the facts concerning the employee. Likewise, the identity of the witness and his motivation, if any, may be significant.

(b) Confidential informants who furnish derogatory information usually will be characterized by the investigative agency as to their reliability. An informant will be described as "reliable" when information obtained from this source has in the past proved to be accurate. The designation of the informant as being of "unknown reliability" will signify only that the source has not been previously tested.

(c) Hearing boards in evaluating the testimony of confidential informants, as in the case of other witnesses, will consider how well the informant knew the employee, the nature of their relationship, etc., and will give due weight to the fact that an independent agency characterized the informants as either reliable or of unknown reliability.

(3) Testimony of employee.

(a) In evaluating the testimony furnished by the employee at the hearing, his demeanor and attitude may be significant. Lack of cooperativeness or evasiveness are factors that should be given consideration.

(b) Of importance in determining an individual's credibility will be his statements at the hearing as compared with replies he gave to the charges or with statements in his application for Federal employment or in other documents. When the information furnished by the employee reflects false statements, misrepresentations, or concealment of material information, a conclusion that the charges are correct may be warranted.

(c) Under the standards of Executive Order 10450, any deliberate misrepresentations, falsifications, or omission of material facts, in themselves, and depending upon the relation of the Government employment to the national security, may

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preclude a finding that retention in employment is clearly consistent with the interests of national security.

j. Evaluating membership and affiliation or sympathetic association with organizations.

(1) Under Executive Order 10450, the Attorney General furnishes to agencies the names of organizations, associations, movements, groups or combinations of persons, which he has designated as totalitarian, Fascist, Communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

(2) In his memorandum of 29 April 1953, designating such organizations, the Attorney General stated, in part:

"Membership in, affiliation with or sympathetic association with, any organization designated pursuant to this Executive Order is but one of the factors by which a department or agency shall reach its determination and, as provided in Section 8, is one of the matters concerning which information shall be developed as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security."

(3) Organizations not designated by the Attorney General may be considered as relevant to security consideration provided that the organizations have been cited by some duly constituted governmental agency, federal, state or municipal, and that the hearing board possesses sufficient information on the subversive nature of the organizations to permit evaluation of the significance of the memberships, affiliations or associations.

(4) In evaluating memberships, affiliations, or associations the security hearing board will give consideration to the employee's statement of his reason for joining and his knowledge of the purposes of the organization. In all cases where membership, affiliation, or sympathetic association is an issue, the "Memorandum of Reasons" will set out the conclusion of the board as to these questions.

k. Need for additional information.

(1) If the results of a hearing show that additional information is necessary before the hearing board can reach a decision in the case, the board will return the case to the Executive Secretary with a request for such additional information. Any such request will be specific as to the additional information required and will be limited to material matters that are essential to reaching a just determination.

★l. Violations of law. All violations of law, as disclosed in the investigations and proceedings under the security program, shall be reported immediately to the Office of the Judge Advocate General of the Navy, with an information copy to OIR Code 110, unless the violations have already been reported by the activity. ★

4-14. DETERMINATION AFTER HEARING.

a. Matters to be considered.

(1) The investigation is conducted and the hearing held to determine whether the retention in employment in the Federal service of a particular individual is clearly consistent with the interests of the national security. Each case will be decided upon the facts in that particular case. Each decision will be based upon the merits of the specific case and not upon unfounded assumptions or distorted viewpoints. A board member's judgment must not be affected by bias or prejudice.

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49

(2) The Attorney General has advised the United States Civil Service Commission that a security hearing board "in making its recommendations should take into consideration whether the employee is a security risk in his particular position in view of all of the derogatory information relating to him." In other words, the Board will consider the nature of the position occupied by the employee and in the light of the derogatory information.

(3) There can be no substitute for good judgment. A fair decision will be reached only after all the facts, favorable and unfavorable, have been analyzed impartially and have been given due weight in their proper perspective.

(4) In reaching its decision, the members of the board must remember that "the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States" (Executive Order 10450).

(5) In weighing individual items of derogatory information and in arriving at a decision, the interests of national security require that reasonable doubts be resolved in favor of the Government.

(6) The decision of the security hearing board (in five copies) must be in writing and signed by all members; two copies of the decision must be sent to the Secretary of the Navy (OIR Code 110), one copy to Director of Naval Intelligence (Op 921D), one copy to the District Intelligence Office, and one copy to the files of the employing activity, each via the head of the employing activity (NCPI 29.2-9f(4)). Under no circumstances will the head of an activity furnish the decision of the Security Hearing Board to the employee, his counsel, or his representative. (NCPI 29.4-13c(9)). The decision itself will not contain the reasons why the board reached its conclusion. A separate "Memorandum of Reasons" will be prepared for that purpose.

b. The Memorandum of Reasons.

(1) The Memorandum of Reasons will be in writing (in five copies) and all copies signed by all members of the board. Its purpose is to set out the board's reasoning in reaching its advisory decision. A copy of this memorandum will not be made available to the employee (NCPI 29.2-9f(4)).

(2) It is suggested that the Memorandum of Reasons bear that heading, and that for ready identification the first paragraph identify the subject of the case by his full name, the title of his position, location of employment, name of the activity and any employment history which may be considered desirable or necessary. It is essential that it be stated whether or not the employee's position is a sensitive position, as defined in NCPI 29.2-3i.

(3) The next paragraph might set out when and where the hearing was held, whether the individual was represented by counsel, whether he testified and produced witnesses, whether the Government produced witnesses, and the names of the board members with identifying information as to each member's position and his agency.

(4) Thereafter, the board will clearly state the basis for its determination. Since this document is to be made a part of the file in the case and is for the use of the Secretary of the Navy in making the final decision, it should be prepared with that in mind. The amount of detail necessary will depend upon the facts and the complexity of the case. ★ In most instances it will be necessary or desirable to explain the board's reasoning and conclusion concerning each charge, whether the decision is favorable or unfavorable to the individual. ★

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(5) When there is a dissent from the majority decision, the dissenting member or members will prepare and sign a Memorandum of Reasons showing wherein he or they differ from the majority.

(6) The signature of each member will bear the date of his signing.

c. The decision.

(1) The board's decision will be in the form of a letter (in five copies) addressed to the Secretary of the Navy (OIR Code 110) via the head of the activity. (NCPI 29.2-9f(4)).

(2) The subject of the case will be clearly identified in the first paragraph, or in a heading. This identification will include name, position, place of employment, and date of suspension.

(3) The authority for the hearing, namely, the act of August 26, 1950 (64 Stat. 476, 5 USC 22-1 et. seq.), Executive Order 10450, as amended, and NCPI 29 will be clearly set out in the decision.

(4) The date and place of the hearing will be set out in the decision.

(5) All decisions, favorable or unfavorable, will be in the language of the Security Standard provided by Executive Order 10450. Suggested language for the decision is: "It is the decision of this Security Hearing Board that the employment of (Mr., Miss, or Mrs. -- full name of individual) is (or, is not) clearly consistent with the interests of national security."

(6) The final paragraph of the decision will state:

"A memorandum setting forth the board's reasoning in reaching this conclusion is attached." (See NCPI 29.2-9f(4)).

(7) Each board member will sign all copies of the decision. He will also note the date after his signature. The signature of the chairman will be followed by the title "Chairman," and the signature of the other members by the title "Member."

(8) If there is a dissent from the decision, the dissenting member will merely indicate before his signature the phrase "I dissent."

(9) Under no circumstances will the head of an activity furnish the decision or memorandum of reasons prepared by a Security Hearing Board to the employee, his counsel or his representative. When the complete case file has been forwarded to the Secretary of the Navy (OIR Code 110) as provided in NCPI 29.4-15, the head of the activity shall inform the employee and his counsel or representative that his case has been forwarded to the Secretary, without advising him of either the Security Hearing Board's decision or his own comments thereon. The employee will remain in suspended status pending final decision by the Secretary of the Navy, and all further correspondence relative to his case shall be directed to the Secretary of the Navy (OIR Code 110).

4-15. SECURITY HEARING BOARD FINDINGS AND SUBSEQUENT ACTION THEREON.

a. The findings of the security hearing board will be addressed to the Secretary of the Navy via the head of the employing activity (NCPI 29.2-9f(4)). The complete file will be forwarded to the head of the activity by the Executive Secretary. The head of the activity will make any comment he considers warranted and forward the case to the Secretary of the Navy (OIR Code 110) in the manner outlined in NCPI 29.4-4c.

b. The head of the activity will continue the suspension of the employee pending decision of the Secretary of the Navy, whether the Security Hearing Board finds favorably or unfavorably in the case.

c. If a decision of the Security Hearing Board or recommendation of the Security Review Board is adverse to the employee, the Security Review Board will advise the employee by letter that he has 20 days (30 days if outside continental United States) in which to ★ submit for Review Board and Secretarial

49

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consideration any affidavits he may wish to make in rebuttal thereto. The employee will be further advised that if he does not submit such affidavits within the time limits stated above, the case will be adjudicated on the record as it stands. Material submitted in rebuttal should be addressed to the Secretary of the Navy (OIR Code 110), via the head of the activity. ★

4-16. ACTION BY NAVY DEPARTMENT SECURITY REVIEW BOARD.

a. When the complete file is received in OIR it will be referred to the Navy Department Security Review Board.

★ b. The Board will meet at the call of the Chairman and will establish its own internal procedures to facilitate consideration of and recommendations regarding security review matters. The Board may, in its discretion, conduct a personal hearing when the facts essential to a determination cannot be obtained in any other manner. The Board may initiate such further investigation and secure such additional evidence as it deems necessary to provide the Secretary of the Navy with sufficient information upon which to base a decision. The Board is empowered to call upon military or civilian personnel of the Navy Department and its activities to furnish pertinent records, materials and testimony. Upon receipt of a security case, the Board will advise the employee concerned of any adverse findings made by the Security Hearing Board and of his right to submit material or representations in rebuttal thereto for consideration by the Security Review Board. He will also be advised of any contemplated adverse recommendation of the Security Review Board and be given an opportunity to submit a rebuttal thereto for consideration by the Secretary of the Navy. The Board will prepare a brief on each security case requiring decision of the Secretary of the Navy, summarizing the pertinent points in the case. The brief will include formal recommendations signed by each Board Member, supported by individual comments and votes. ★

★ c. All violations of law, as disclosed in the investigations and proceedings under the security program, shall be reported immediately to the Office of the Judge Advocate General of the Navy unless this has been done by officials previously considering the case. ★

4-17. ACTION BY SECRETARY OF THE NAVY. --The Secretary of the Navy will make a decision in the case, and notify the activity of final action to be taken in the case. The Secretary of the Navy, at the same time, will inform the individual concerned, via the head of the activity, of the final decision in the case.

4-18. NOTIFICATION TO INDIVIDUAL.

a. Security decision. --In every case in which an interview has been held with the subject of the case or an interrogatory or charges has been issued, the individual concerned must be informed of the final security decision. In any case in which an interview has not been held or an interrogatory or charges has not been issued, the head of the activity may, in his discretion, or upon the request of the employee, inform the individual concerned of the security decision.

b. Personnel actions. --When the Secretary of the Navy orders the suspension, removal, or restoration of an employee, the personnel action form will cite under "Remarks" the letter from the Secretary of the Navy, the authority cited therein, and NCPI 29. Two copies of such personnel actions will be forwarded to OIR Code 110.

SECTION 5, PROCEDURE IN CASES OF SEPARATION, WITHDRAWAL OF APPLICATION, OR TRANSFER, AND REIMBURSEMENT OF EMPLOYEES

	Paragraph No.
Procedure in cases of separation, withdrawal of application, or transfer	5-1
Reimbursement of employees restored	5-2

5-1. PROCEDURE IN CASES OF SEPARATION, WITHDRAWAL OF APPLICATION, OR TRANSFER. --The complete files of all employees who are separated for any reason from the Federal

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service before a final decision is reached shall be sent forthwith by registered mail to OIR Code 110, with a copy of the Standard Form 50 effecting the action. This procedure should be followed in cases of separation during continuous service to allow transfer to another agency. A copy of the transmittal letter will be forwarded directly to the Director of Naval Intelligence, Department of the Navy, Washington 25, D. C., and a copy to the District Intelligence Office, for record purposes.

5-2. REIMBURSEMENT OF EMPLOYEES RESTORED.--In case the Secretary of the Navy orders restoration of an employee who was suspended or removed under Public Law 733, he will cite that law as authority for the restoration. Public Law 733 requires that any employee (permanent or indefinite) having completed a probationary or trial period, who is suspended or removed under the provisions of that Act and subsequently restored to duty shall be allowed compensation for all or any part of the period of such suspension or removal in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or removal, at the rate he was receiving on the date of suspension or removal, and the interim net earnings of such employee. The back-pay provision of Public Law 733 does not deny accumulation of leave during the period of suspension or removal. Therefore, employees restored under this authority will be credited with annual and sick leave for the period for which compensation is allowed (31 Comp. Gen. 58; B-105001 of 30 August 1951).

SECTION 6, CHARACTER AND SUITABILITY

	Paragraph No.
General statement	6-1
Procedure to be followed . .	6-2
Disclosure of reason for adverse action against trial and probationary period employees.	6-3
Failure to be cleared for "sensitive" duties	6-4
Arrest records (FBI Form 1-4) from the Civil Service Commission	6-5

6-1. GENERAL STATEMENT.--During personnel investigation, information may be uncovered which reflects adversely upon the general character, conduct, suitability, and reliability of an employee. The adverse reflection upon the employee's character may be grave enough to call into question the employee's suitability for retention in his position, or for continued Navy employment. When the employee cannot be retained in his position, he should be reassigned or demoted to a position in which his character deficiencies are not a bar to employment. When such action is not possible due to the gravity and nature of the derogatory information or the nature of the work tasks in the employing activity, it may be necessary to separate the employee. The nature of the action will be either Separation-Disqualification (NCPI 210.7), or Removal (NCPI 45), as appropriate.

6-2. PROCEDURE TO BE FOLLOWED.--NCPI 210.7 or NCPI 45 shall be used appropriately as determined by the employee's status. Compliance with these procedures must be observed, except as noted below, if adverse action is taken due to unsuitability or on the basis of other derogatory information. Derogatory information of a subversive nature as outlined in NCPI 29.3 shall not be considered in removal actions under Procedure "B" of NCPI 45 but shall be considered under the provisions of NCPI 29.4. It is conceivable that such cases may contain not only derogatory information of a subversive nature but also derogatory information which would call into question suitability or justify disciplinary action. It is desirable in such circumstances where an employee is charged with a series of charges under NCPI 29.4-9, no charges be included which may be appropriate for handling as a disciplinary or suitability matter, if in the opinion of the command exclusion of such charges will not compromise the

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security case against the individual. Exclusion of charges which are of a disciplinary or suitability character from security charges will permit later action by command, if desired, under the procedures of NCPI 45 in the event the Secretary of the Navy makes a finding on the security charges favorable to the employee.

6-3. DISCLOSURE OF REASON FOR ADVERSE ACTION AGAINST TRIAL AND PROBATIONARY PERIOD EMPLOYEES.--The provisions of NCPI 210.7 and procedure "A" of NCPI 45.5-2 must be satisfied except as modified below. The employee must be informed during the informal discussion that the adverse action is being taken as he has been found unsuitable for the position he occupies, because of confidential information which has been disclosed to the commanding officer. Further, the employee should be informed of the specific information contained in the investigative report which constitutes the reasons for the determination that he is unsuitable (providing the sources of such information are protected) and be permitted to reply thereto. On the other hand, if specific information contained in the investigative report is of such nature that its disclosure would be prejudicial to security, it will not be disclosed or discussed with the employee.

6-4. FAILURE TO BE CLEARED FOR "SENSITIVE" DUTIES.--When an employee cannot be cleared for "sensitive" duties, it may be necessary to reassign, demote, or separate him from employment. Should it be necessary to demote or separate the employee because he cannot be cleared for "sensitive" duties, the provisions of this section must be observed. Procedure "A" or "B" of NCPI 45.5 must be used as appropriate.

a. Employees covered by Procedure "A".--In cases involving Procedure "A", the employee must be informed during the informal discussion that the adverse action is being taken because he cannot be cleared for "sensitive" duties. Further, the employee should be informed of the specific information contained in the investigative report which constitutes the reasons for the determination that he cannot be cleared for "sensitive" duties (providing the sources of such information are protected) and permitted to reply thereto. On the other hand, if specific information contained in the investigative report is of such nature that its disclosure would be prejudicial to security, it will not be disclosed or discussed with the employee. In all cases the following remark should appear on the Personnel Action Form: "Failure to be cleared for 'sensitive duties.'"

b. Employees covered by Procedure "B".--Employees covered by Procedure "B" of NCPI 45.5 must be accorded the full protection of that procedure. The charges must set forth specifically and in detail the reasons why the employee cannot be cleared for sensitive duties. When this information can be taken from classified reports without divulging the source of information and without violating security regulations, independent investigation may not be required. When this information cannot be taken from classified reports without divulging the source or compromising the national security, the evidence shall be developed through separate inquiry or investigation. This requirement must be observed in order that the employee can be confronted with the specific reasons and bases for the adverse action. If separate inquiry or investigation cannot be developed, action shall be taken in accordance with NCPI 29.4. In some instances, decision of the Secretary of the Navy under security procedures may require that an employee suspended under authority of Public Law 733, 81st Congress, and Executive Order 10450 be restored to employment but to a continuing non-sensitive position of equal rank and pay as the sensitive position from which he was suspended. In exceptional cases, where a continuing position of equal rank and pay does not exist at the employing activity, ★ ★ reassignment of the employee to a position for which he has requisite qualifications may necessitate a change to lower grade. An employee covered by Procedure "B" of NCPI 45.5 must be accorded the full protection of that procedure when action to effect the change to lower grade is initiated. The

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employee shall be advised in the advance notice required by Procedure "B" that the change to lower grade is necessary because reassignment to a continuing non-sensitive position of equal rank and pay could not be effected because there was no such position within the ★employing activity★ and the only continuing non-sensitive position for which the employee has requisite qualifications and to which he can be reassigned is a position of lower grade than the one he occupied.

6-5. ARREST RECORDS (FBI FORM 1-4) FROM THE CIVIL SERVICE COMMISSION.

a. Sources and categories of arrest records.--The Federal Bureau of Investigation furnishes the Civil Service Commission with arrest records on employees in the Federal service. The Civil Service Commission furnishes the arrest records to the appropriate agency or department of the Federal government for information and consideration in accordance with Section 5 of Executive Order 10450 (NCPI 29.8-Encl. 1). The Office of Industrial Relations transmits reports of arrest records, Form 1-4, on employees of the Naval Establishment to naval activities concerned for information, consideration, and appropriate action. The arrest records fall into three general categories: FBI Form 1-4 in a pending investigation by the Commission under Executive Order 10450; FBI Form 1-4 bearing a name which is the same as, or similar to, that of a person employed by a naval activity but in whose case the Commission is not conducting an investigation; and, FBI Form 1-4 stemming from either of the above two categories but considered separately because the arrest record contains charges implying sexual perversion.

b. Authority under which action is to be taken on arrest records.--NCPI 29.2-4e states that maximum use will be made of normal civil service removal procedures where national security is not a consideration and such procedures are adequate and appropriate. Action on arrest records is particularly subject to this policy in that adequate disciplinary and removal procedures exist under normal civil service procedures to act on arrest records. Activities should make maximum use of the procedures of NCPI 45 and 210 in taking action on arrest records. The security procedures of NCPI 29.4 shall be used only in those instances where normal civil service procedures are inadequate and inappropriate and the individual's arrest record contains charges indicating character defects which may cause him, of his own volition or by coercion, to act contrary to the interest of the national security.

c. ★Action to be taken on arrest records on employees transferred to other naval activities or Federal agencies.--In the event that the employee concerned has transferred to another naval activity or Federal agency prior to receipt of the arrest record, the activity shall forward the arrest record directly to the gaining activity for appropriate action. Advice of such forwarding of arrest records is not required by the Civil Service Commission. A copy of the forwarding letter should be furnished to the Chief of Industrial Relations (OIP Code 110) only if the arrest record involves sexual perversion (NCPI 29.6-5g).

d. Consideration of arrest records and appropriate action.--The Office of Industrial Relations will forward arrest records to the activity by stamped endorsement on CSC transmittal Forms DI 205 and DI 206, except those involving sexual perversion, which are forwarded by OIR form letter. Upon receipt of the arrest record the activity shall inquire into the circumstances involved. Information as to the disposition of the charges, if not indicated in the arrest record, or other clarifying data should be requested from the appropriate Civil Service Regional Office or District Intelligence Office. Requests for such information or data in cases of applicants or appointees who are the subject of pending investigation under Executive Order 10450 (NCPI 29.6-5e) will be made to the appropriate Civil Service Regional Office. Otherwise the requests will be made to the appropriate District Intelligence Office. After evaluation of the arrest record the activity head shall take such action, in accordance with

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NCPI 29.6-5b, as is considered warranted.

e. FBI FORM 1-4 in a pending investigation under Executive Order 10450. -- The Office of Industrial Relations will forward the arrest record to the activity, along with the CSC transmittal Form DI 205, in duplicate. If the employee is retained on the rolls, no report of the action to the Civil Service Commission is required, and the arrest record should be filed in the activity files. If the employee is to be or has been separated (except by transfer to another naval activity or Federal agency), the separation action will be reported by the completion of the lower half of Form DI 205, which will be mailed, along with the arrest record, directly to the U. S. Civil Service Commission Office shown in the lower half of Form DI 205. No report of the action taken will be made to the Office of Industrial Relations, except as provided by NCPI 29.6-5g.

f. FBI FORM 1-4 not pending investigation under Executive Order 10450. -- The Office of Industrial Relations will forward the arrest record to the activity, along with CSC Form DI 206, in duplicate. No report of the action taken is required by the Civil Service Commission. If separation is or has been effected the submission to the Commission of Standard Form 50 will suffice for the Commission's records. No report of the action taken will be made to the Office of Industrial Relations except as provided in NCPI 29.6-5g.

g. FBI FORM 1-4 which contains charges of sexual perversion. --The Office of Industrial Relations will retain on file CSC Forms DI 205 or 206 and will forward the arrest records to the activity by form letter. The head of the activity shall report the action taken in every case to the Chief of Industrial Relations (OIR Code 110). In those cases in which the head of the activity determines that removal or separation is not warranted the report shall explain the basis for the decision to retain the employee. Whether the subject of the arrest record is retained or separated (except by transfer to another naval activity or Federal agency) the arrest record should be filed in the activity security files.★

SECTION 7, SECURITY REQUIREMENTS

	Paragraph No.
Legal basis	7-1
Definitions	7-2
General provisions	7-3
Security investigations for persons appointed to non-sensitive positions	7-4
Security investigations of applicants for sensitive-noncritical positions	7-5
Security investigations for persons appointed to sensitive-critical positions	7-6
Additional clearances	7-7
Security investigations for employment in per diem, intermittent, temporary, or seasonal status for period of six months or less of United States citizens or aliens in United States, its territories and possessions	7-8
Security investigations of aliens employed outside the United States, its territories and possessions in temporary or seasonal status not in excess of three months	7-9
Security investigations of aliens employed outside the United States, its territories and possessions for extended periods	7-10
Security investigations for persons employed after break in service	7-11
Security investigations for employees who: (1) are appointed without a break in service; (2) transfer from another government agency; (3) change their headquarters; or (4) change their posts of duty	7-12
Security investigations for employees who are promoted, reassigned, or changed to lower grade	7-13

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7-1. LEGAL BASIS.--Executive Order 10450 of 27 April 1953 (see NCPI 29.8-Encl. 1) provides security requirements for Government employment. Policies, standards, and instructions to be followed are based on agreements between the Department of Justice, the Department of Defense, and the Civil Service Commission, implementing the provisions of Executive Order 10450.

7-2. DEFINITIONS.--The terms listed below will have the meanings indicated when used in this section:

a. Appointing officer.--That official authorized by the provisions of NCPI 135.2-3 to effect personnel actions.

b. Appropriate office of the Civil Service Commission.--The office of the Civil Service Commission having jurisdiction over the area in which the appointing officer is located. The Bureau of Departmental Operations, Investigations Division, Civil Service Commission, Washington 25, D. C., is the appropriate office of the Commission for appointments in the Washington metropolitan area.

c. Appropriate office of Naval Intelligence.--The Naval Intelligence office having jurisdiction over the naval district or river command in which the appointing officer is located. The appropriate office for all others is the Chief of Naval Operations (Director of Naval Intelligence).

d. Background Investigation.--A Background Investigation is a thorough and complete investigation, conducted by Naval Intelligence, in which pertinent facts having bearing on the loyalty, integrity, and reputation of the subject are developed. The essential elements of a Background Investigation are set forth in Article 1502, U. S. Navy Security Manual for Classified Matter.

e. Full Field Investigation.--An investigation by the Federal Bureau of Investigation or the Civil Service Commission conducted personally to obtain full facts regarding the background and activities of the individual upon which a determination can be made as to whether his employment by the Government is consistent with the interest of national security.

f. Incumbent.--An incumbent is an employee who was on the rolls of the Department of the Navy on 27 May 1953 and has been continuously employed by the Department of the Navy.

g. National Agency Check.--A national agency check consists of the investigation of records and files of the agencies named in paragraph 2, Article 1502, Chapter 15, U. S. Navy Security Manual.

h. Non-sensitive position.--Any position which does not involve duties and responsibilities described in position defined as "Sensitive-Critical" or "Sensitive-Noncritical."

i. Security Officer.--The Security Officer is that individual who has responsibility for processing clearances for access to classified matter.

j. Sensitive-Critical position.--A "sensitive-critical position" is any position, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security. Such positions will include: Any position which involves responsibility for the development or approval of war plans, plans or particulars of future major or special operations of war, or critical and extremely important items of war, or policies and programs which affect the over-all operations of any of the components of the Department of Defense. This will include positions at GS-14 and above; positions at GS-12 and 13, if the employee will have access to TOP SECRET security information; and employment under personal service contract if the employee will have access to TOP SECRET security information. Additional positions may be designated by the head of the activity as meeting the requirements of the foregoing definition provided that the designation is certified to OIR Code 110 by the activity head.

k. Sensitive-Noncritical position.--A "sensitive-noncritical position" is any position other than those in the Sensitive-Critical category, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security. Such positions will include: Any position, the duties or responsibilities of which require access to TOP SECRET, SECRET, OR CONFIDENTIAL security information or material

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and any other position so designated by authority of the Secretary of Defense or of the Secretary of the Navy or by the head of the activity.

l. Supplemental (limited personal) investigation. --An investigation conducted personally but limited to obtaining facts concerning derogatory information which was developed during a national agency check and inquiry and might be disqualifying.

m. Written inquiries. --Requests in writing (forms) for pertinent information from law enforcement agencies, former employers and supervisors, references and schools.

7-3. GENERAL PROVISIONS.

a. Special agreement between Department of Defense and Civil Service Commission concerning investigations under Executive Order 10450. There is a special agreement, in accordance with subsections 8(b) and 8(c) of Executive Order 10450, between the Department of Defense and the Civil Service Commission regarding investigations conducted under the Order. This section of NCPI 29 outlines the terms of the agreement and the procedures implementing it insofar as the Department of the Navy is concerned. For investigative purposes there are three general classifications of positions in the Department of the Navy: Sensitive-Critical positions (NCPI 29.7-2j); Sensitive-Noncritical positions (NCPI 29.7-2k); and Non-sensitive positions (NCPI 29.7-2h). Types of investigations required, investigative agencies responsible for conducting the investigations, and time for conducting the investigations (pre-appointment, post-appointment, etc.) are determined by the general classification of the position and by the Civil Service status (excepted or competitive applicant, appointee or incumbent employee) of the person concerned.

b. Application of Executive Order 10450 (as implemented by agreement described in NCPI 29.7-3a). Executive Order 10450 requires that investigations be conducted: of appointees in Sensitive-Critical, Sensitive-Noncritical, and Non-sensitive positions; of incumbent employees who were appointed after 30 September 1947, but prior to 28 May 1953, and who occupy Sensitive-Noncritical positions, if they have not been cleared under the provisions of Executive Order 9835, as amended, based upon satisfactory completion of at least a Civil Service Commission record check and inquiry; of incumbent employees who were appointed on or before 30 September 1947, who occupy Sensitive-Noncritical positions, if they have not, subsequent to 30 September 1947, been the subject of a National Agency Check completed with satisfactory results in connection with clearance for access to matter classified CONFIDENTIAL or above; of incumbent employees who occupy Sensitive-Critical positions, who have not been the subject of a Background Investigation (or its equivalent) completed with satisfactory results at any time subsequent to employment by the Navy; and, incumbent employees who occupy Nonsensitive positions, who have not been either cleared under Executive Order 9835, as amended, or the subject of a National Agency Check and Written Inquiry conducted under Executive Order 10450 (one or the other is acceptable, both are not required) completed with satisfactory results. (See also NCPI 29.7-8, 9 and 10)

c. Responsibility for investigation of applicants and appointees.

(1) Sensitive-critical positions. --Background Investigation, including National Agency Check, conducted by appropriate office of Naval Intelligence. In an emergency situation, the Civil Service Commission will conduct a priority National Agency Check, but Background Investigation, less National Agency Check, will be conducted by appropriate office of Naval Intelligence.

(2) Sensitive-Noncritical positions and Nonsensitive positions. --The Civil Service Commission will conduct National Agency Checks and Written Inquiries for both competitive and excepted positions and any further limited investigation necessary to make a security decision in cases involving positions in the competitive service. The

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appropriate office of Naval Intelligence will conduct any further limited investigation which may be required in excepted positions.

d. Responsibility for investigation of incumbent employees.--The appropriate office of Naval Intelligence will conduct any additional investigations regarding incumbents in all three classes of positions.

7-4. SECURITY INVESTIGATIONS FOR PERSONS APPOINTED TO NON-SENSITIVE POSITIONS.

a. Investigative requirements.--Whenever an appointee enters on duty in a non-sensitive position (NCPI 29.7-2h), except as provided in NCPI ☆29.7-11c,★ the activity shall initiate an investigation as required by section 3(a) of Executive Order 10450 (NCPI 29.8-Encl. 1). This investigation will include not less than a National Agency Check and Written Inquiries as defined in NCPI 29.7-2g and NCPI 29.7-2m. National Agency Checks and Written Inquiries will be made by the Civil Service Commission of persons appointed to non-sensitive positions.

b. Procedural instructions.--Procedural instructions to activities for initiating a National Agency Check and Written Inquiries to be conducted by the Commission are given in NCPI 29.8-Encl. 11.

c. Supplemental investigation.--If the National Agency Check and Written Inquiries develop information of the type referred to under Section 8(a)(1) of Executive Order 10450, in the case of an appointee in a non-sensitive position in the competitive service, the Commission will make such further investigation as shall be sufficient to enable the activity concerned to determine whether retention of such person is clearly consistent with the interests of the national security. Ordinarily this will not be the equivalent of a full field investigation but will be limited to covering by personal investigation the adverse information developed in the National Agency Check and Written Inquiries. The employing activity shall request the appropriate office of Naval Intelligence to conduct any further investigation necessary with regard to excepted positions.

d. Action upon receipt of results of National Agency Check and Written Inquiries.--The Commission will furnish a report of the National Agency Check, the replies to Written Inquiries, and a report of limited personal investigations (see NCPI 29.7-21) if conducted, providing separation is not ordered by the Commission, to the activity official designated in the case papers to receive the report. (The Commission will dispatch Written Inquiries to the sources named in section 3(a) of Executive Order 10450. Whatever replies are received from these sources will be included in any report furnished the activity without further attempt on the part of the Commission to obtain information from those sources which failed to reply.) The activity shall process report, and dispose of the results of National Agency Check and Written Inquiries in accordance with NCPI 29.8-Encl. 11.

e. Cases in which investigation by Federal Bureau of Investigation is warranted.--If the National Agency Check and Written Inquiries develop information of the type referred to in Section 8(d) of Executive Order 10450, the Commission will refer the case to the Federal Bureau of Investigation for a full field investigation. A report of the full field investigation will be furnished to the Office of Industrial Relations for referral to the employing activity for appropriate action.

7-5. SECURITY INVESTIGATIONS OF APPLICANTS FOR SENSITIVE-NONCRITICAL POSITIONS.

a. Investigative requirements.--Applicants for sensitive-noncritical positions (NCPI 29.7-2k) must have an investigation consisting of not less than a National Agency Check, completed with satisfactory results prior to appointment, and Written Inquiries. The Civil Service Commission conducts a preappointment National Agency Check on a priority basis and simultaneously mails Written Inquiries. An advance report of the National Agency Check is made by the Commission's central office to the requesting naval activity. The naval activity may at this point appoint the applicant to the sensitive-noncritical position provided the advance report of

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National Agency Check is clearly favorable to the applicant. The complete results of the National Agency Check and Written Inquiries are furnished subsequently by the appropriate Civil Service regional office (or Central Office for the Washington, D. C., metropolitan area) unless the case is discontinued or the Commission takes adverse rating action. An applicant may be appointed to a sensitive-noncritical position following the completion of a National Agency Check with satisfactory results, but the Written Inquiries must, when received from the Civil Service Commission, be evaluated by the appointing officer and the security officer, and appropriate action taken before the investigative requirements may be considered as fully met. In case of emergency, such position may be filled pending completion of the National Agency Check if the head of activity concerned finds that such action is necessary in the interests of national defense, which finding will be made a part of the records of the activity. This exception is permitted only when a request has been made for the National Agency Check and Written Inquiries. Further, within two calendar weeks the head of the activity shall report in writing the exceptions made and the basis therefor to the District Commandant or appropriate River Command (DIO).

b. Procedural instructions. --Procedural instructions to activities for initiating a National Agency Check and Written Inquiries to be conducted by the Commission are given in NCPI 29.8-Encl. 12.

c. Supplemental investigation. --See NCPI 29.7-4c.

d. Action upon receipt of results of National Agency Check and Written Inquiries. --Instructions given in NCPI 29.8-Encl. 12.

e. Cases in which investigation by Federal Bureau of Investigation is warranted. --See NCPI 29.7-4e.

7-6. SECURITY INVESTIGATIONS FOR PERSONS APPOINTED TO SENSITIVE-CRITICAL POSITIONS.

a. Investigative requirements.

(1) Incumbent employees. --Incumbent employees who occupy sensitive-critical positions ★(NCPI 29.7-2j)★ must receive a Background Investigation as defined in Chapter 15 of the United States Navy Security Manual for Classified Matter, unless a Background Investigation or its equivalent (full field investigation) has already been completed with satisfactory results at any time subsequent to employment by the Navy. In such cases the following notation, signed by the the Appointing Officer, must be placed in the employee's personnel folder: "No further investigation under E. O. 10450 is required in view of Background Investigation or its equivalent completed with satisfactory results on (date)." Questions as to the adequacy of investigations in terms of the above standard shall be referred to the appropriate office of Naval Intelligence for determination. Incumbent employees who occupy sensitive-critical positions who have not been the subject of a Background Investigation or its equivalent must be investigated in the manner outlined in NCPI 29.8-Encl. 13. The request for Background Investigation shall clearly state: "THIS IS A REQUEST FOR A BACKGROUND INVESTIGATION ON AN INCUMBENT EMPLOYEE ★IN A SENSITIVE-CRITICAL POSITION ★AS REQUIRED BY E. O. 10450." The incumbent employee may continue to occupy his position, pending completion of the Background Investigation, unless derogatory information developed during the course of the investigation clearly indicates that the retention of the employee in an active duty status may be detrimental to the interests of the government. In such cases the provisions of NCPI 29.2-9c(4) shall be applied. The activity shall also inform the appropriate office of Naval Intelligence of the situation, so that steps may be taken to expedite completion of the Background Investigation. In exceptional cases the activity may,

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after consulting with the appropriate office of Naval Intelligence, proceed with adjudication in accordance with NCPI 29.4 or 29.6 as appropriate, if such action is considered necessary, in advance of completion of the Background Investigation. ★When the investigative reports are forwarded to the activity for adjudication, the appropriate office of Naval Intelligence will prepare SF 74, in quadruplicate, and will forward three copies to the Chief of Industrial Relations (OIR Code 110) and the fourth copy to the activity for the activity's files. Upon adjudication, the activity head will forward his decision on SF 72, in duplicate, to the Chief of Industrial Relations (OIR Code 110). The SF 74 and SF 72 are required only for background investigations under E. O. 10450 on incumbents in sensitive-critical positions, or on persons appointed, reassigned, transferred, promoted, etc., to a sensitive-critical position under the emergency provisions set forth in NCPI 29.7-6a(2) below. The SF 74 and SF 72 are not required on background investigations in connection with contemplated personnel actions involving sensitive-critical positions unless the subject of the investigation is actually filling the position. They are not required, either, for background investigations conducted for clearance or other purposes.

(2) Applicants and emergency appointments.--No civilian shall be appointed or assigned to a sensitive-critical position prior to completion with satisfactory results of a Background Investigation as defined in Chapter 15, United States Navy Security Manual for Classified Matter. In case of emergency, such position may be filled pending completion of Background Investigation if the head of the activity concerned finds such action is necessary in the interests of national defense, which finding will be made a part of the records of the activity. This exception is permitted only when a National Agency Check (see NCPI 29.8-Encl. 13, Item III) with results satisfactory to the Commanding Officer has first been completed and a request has been made for a Background Investigation. The request for a Background Investigation shall clearly state THIS IS A REQUEST FOR A BACKGROUND INVESTIGATION FOR EMERGENCY APPOINTMENT TO A SENSITIVE-CRITICAL POSITION. Within two calendar weeks, the head of the activity shall report in writing the exceptions made above and the basis therefor to the Chief of Naval Operations (Director of Naval Intelligence) via the District Commandant or appropriate River Commander (District Intelligence Officer), with copy to Chief of Industrial Relations (OIR Code 110). When the results of the Background Investigation on the appointee are forwarded to the activity for adjudication, the appropriate office of Naval Intelligence will prepare SF 74 in quadruplicate and will forward three copies to the Chief of Industrial Relations (OIR Code 110) and the fourth copy to the activity for the activity's files. Upon adjudication the activity head will forward his decision on SF 72, in duplicate, to the Chief of Industrial Relations (OIR Code 110). The SF 74 and SF 72 are required only for background investigations under the provisions of E. O. 10450 on emergency appointees to sensitive-critical positions. They are not required for background investigations under E. O. 10450 on applicants who are not appointed under the emergency provisions set forth above or for background investigations conducted for clearance or other purposes.★

b. Procedural instructions.--Procedural instructions to activities for initiating a Background Investigation to be conducted by appropriate office of Naval Intelligence are given in NCPI 29.8-Encl. 13, Item I.

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c. Supplemental investigation ★ or reinvestigation. --When it is determined by the employing activity that supplemental investigation or reinvestigation is required to resolve an issue in a case of an employee reported previously to the Chief of Industrial Relations (OIR Code 110) on Standard Form 74, the activity will forward to the Chief of Industrial Relations its file copy of the original Standard Form 74, submitted by the District Intelligence Office, prominently noted to show that the case has been submitted to the appropriate office of Naval Intelligence for reinvestigation. When a supplemental investigation or reinvestigation on an employee has been forwarded to the activity for adjudication, the appropriate office of Naval Intelligence will forward Standard Form 74, in triplicate, to the Chief of Industrial Relations (OIR Code 110) and a fourth copy to the activity for the activity's files.★

d. Action upon receipt of Background Investigation. --Activities shall follow the instructions given in NCPI 29.8-Encl. 13, Item II, in processing, reporting, and disposing of Background Investigations.

e. Prompt adjudicative action required by Executive Order 10550. --Executive Order 10550 amended Section 14 of Executive Order 10450 (NCPI 29.8-Encl. 1) to the effect that each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to full field investigation under the provisions of Executive Order 10450, advise the Civil Service Commission as to the action taken with respect to such officer or employee. The Chief of Industrial Relations is responsible for making such reports to the Civil Service Commission. So that this may be done, it is essential that activities adjudicate Background Investigation reports on employees ★, including appointees who have been appointed under the exception provisions of NCPI 29.7-6a(2),★ within sixty days of the date the completed Background Investigations are forwarded to activities by offices of Naval Intelligence, and report the decision to the Chief of Industrial Relations (OIR Code 110) in accordance with NCPI 29.8-Encl. 13, Item II, paragraph 3. If for any reason adjudication cannot be made within sixty days activities shall comply with NCPI 29.2-9c(7)(b).

7-7. ADDITIONAL CLEARANCES.

a. Clearance for handling TOP SECRET information. --When an employee, for whom a National Agency Check has been completed with satisfactory results, is assigned to a sensitive-noncritical position in which he will have access to TOP SECRET information, the requirements of Chapter 15, U. S. Navy Security Manual for Classified Matter, shall be followed. An immediate request will be initiated for the appropriate final clearance for handling TOP SECRET information.

b. Specific permission to employ foreign nationals on Navy Classified Matter. --Permission to utilize foreign nationals on Navy classified matter within the Naval Establishment must be authorized by the Chief of Naval Operations (Director of Naval Intelligence) prior to assignment. The authority will be granted only in cases of absolute necessity and for specific tasks and projects and will be conditional upon the completion of a Background Investigation or such investigation as in the opinion of the Chief of Naval Operations (Director of Naval Intelligence) is sufficiently complete and reliable to form a basis for determining whether utilization of the foreign national is clearly consistent with the interest of National Security.

7-8. SECURITY INVESTIGATIONS FOR EMPLOYMENT IN PER DIEM, INTERMITTENT, TEMPORARY, OR SEASONAL STATUS FOR PERIOD OF SIX MONTHS OR LESS OF UNITED STATES CITIZENS OR ALIENS IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS. Persons so employed are subject to the following security investigations completed with satisfactory results:

a. Non-sensitive positions. --Appropriate investigation as determined by the head of the activity. The investigation normally will not be more than a check of references and local agencies.

b. Sensitive-noncritical positions. --Procedures stipulated in NCPI

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29.8-Enclosure 12, apply. With regard to aliens, the provisions of NCPI 29.7-7b also apply.

c. Sensitive-critical positions.--Procedures stipulated in NCPI 29.8-Enclosure 13, apply. With regard to aliens, the provisions of NCPI 29.7-7b also apply.

7-9. SECURITY INVESTIGATIONS OF ALIENS EMPLOYED OUTSIDE THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS IN TEMPORARY OR SEASONAL STATUS NOT IN EXCESS OF THREE MONTHS.--Persons so employed are subject to the following security investigations completed with satisfactory results:

a. Non-sensitive positions.--Appropriate investigation as determined by the head of the activity. The investigation normally will be not more than a check of references and local agencies.

b. Sensitive-noncritical positions.--Appropriate investigation as determined by the head of the activity. The investigation normally will be not more than a check of references and local agencies. The provisions of NCPI 29.7-7b must be observed, where applicable.

c. Sensitive-critical positions.--Procedures stipulated in NCPI 29.8-Enclosure 13, apply, as do the provisions of NCPI 29.7-7b.

7-10. SECURITY INVESTIGATIONS OF ALIENS EMPLOYED OUTSIDE THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS FOR EXTENDED PERIODS. Persons so employed are subject to the following security investigations completed with satisfactory results:

a. Non-sensitive positions.--A review of as many of the following sources as feasible:

(1) Check of the foreign government national agencies.
(2) Check of local law enforcement agencies where individual resides or resided during the previous five years.
(3) Check of references, former employers and supervisors.
(4) Check of schools attended.

b. Sensitive-noncritical positions.--The same review of sources cited in a above plus meeting the requirements of NCPI 29.7-7b, where applicable.

c. Sensitive-critical positions.--Procedures stipulated in NCPI 29.8-Enclosure 13, apply, as do the provisions of NCPI 29.7-7b.

7-11. SECURITY INVESTIGATIONS FOR PERSONS EMPLOYED AFTER BREAK IN SERVICE. Under Executive Order 10450 all former Federal employees who are reemployed in the Naval Establishment are subject to investigation as follows:

a. Sensitive-critical positions.--A sensitive-critical position, as defined in NCPI 29.7-2j, may be filled by the reemployment of a former Federal employee who has had a break in his ★service, under the following conditions: If the break in service has not been in excess of 90 days and the investigative requirements for this category of position have been met by prior investigation, no further investigation is required. However, in filling such sensitive-critical position, the provisions of NCPI 29.7-6 and NCPI 29.7-7 will apply. In the event there has been a break in service since the prior investigation in excess of 90 days, supplemental investigation will be conducted to bring the prior investigation up to date. When required, reemployment may be made on the same emergency basis as that provided for applicants and appointees under NCPI 29.7-6a(2).★

b. Sensitive-noncritical positions.--A sensitive-noncritical position, as defined in NCPI 29.7-2k, may be filled by the reemployment of a former Federal employee who has had a break in his ★service, under the following conditions: If the break in service has not been in excess of 90 days and the investigative requirements for this category of position have been met by prior investigation, no further investigation is required. However, in filling such sensitive-noncritical position, the provisions of NCPI 29.7-5 and NCPI 29.7-7 will apply. In the event there has been a break in service since the prior investigation in excess of 90 days, an up-to-date National Agency Check and Written Inquiries must be completed. When required, reemployment may be made on the same emergency basis as that provided for applicants under NCPI 29.7-5a.★

c. Non-sensitive positions.--In the case of reemployment when the current

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appointment is to a non-sensitive position, as defined in NCPI 29.7-2h, and the appointee has had no break in service in excess of one year since his last employment in the Government, submission of Standard Forms 85 and 87 and allied papers may be deferred until the official personnel folder has been obtained. The gaining activity shall review the official personnel folder to determine whether required checks, under Executive Order 9835 or Executive Order 10450, have been completed. If this cannot be determined from review of the personnel folder, inquiry shall be made of the activity previously employing the appointee which shall furnish other evidence of completion of such checks, if they have been made, for inclusion in the records of the gaining activity. Thereafter, if it is determined that the required checks made under Executive Order 9835 or Executive Order 10450 have been completed no reinvestigation is required and the activity need not prepare and submit Standard Forms 85 and 87 and allied papers on the appointee. If there is no evidence in the official personnel folder that the required checks have been completed ★or if there has been a break in service in excess of one year, the gaining activity shall prepare and submit the forms for initiating such check. NCPI 29.8-Encl. 11 sets forth procedures for initiating and processing National Agency Checks and Written Inquiries for non-sensitive positions under the requirements of Executive Order 10450.★ If the appointee's break in service has been in excess of one year, the required forms must be submitted within 3 days of entrance on duty.

7-12. SECURITY INVESTIGATIONS FOR EMPLOYEES WHO: (1) ARE APPOINTED WITHOUT A BREAK IN SERVICE; (2) TRANSFER FROM ANOTHER GOVERNMENT AGENCY; (3) CHANGE THEIR HEADQUARTERS; OR (4) CHANGE THEIR POSTS OF DUTY. Under Executive Order 10450 employees who are moved in employment in any of the above specified ways are subject to investigation as stated in a and b below.

a. Sensitive positions. --This paragraph (7-12) is designed to insure the completion of an adequate investigation before moving an employee from a non-sensitive position to a sensitive-noncritical position (NCPI 29.7-2k) or to a sensitive-critical position (NCPI 29.7-2j), or from a sensitive-noncritical position to a sensitive-critical position.★ The requirements stated herein in no way relieve the Commanding Officer of his responsibility or his authority with respect to the granting of clearances for access to classified matter as specified in Chapter 15 of the United States Navy Security Manual for Classified Matter. No investigative requirements are set forth for moving an employee from a position of a given category of sensitivity to a position of the same category of sensitivity, since the previous investigation which led to the employee's assignment to the sensitive position is considered to be adequate for moving an employee to a position in the same category of sensitivity as the one he occupies. However, in the event a break in service in excess of 90 days has occurred since the previous investigation, additional or supplemental investigation as outlined in (1) and (2) below must be completed.★

(1) An employee may be moved from a non-sensitive position to a sensitive-noncritical position by effecting any of the personnel actions listed above, provided that a previous favorable check under either Executive Order 9835 or Executive Order 10450 has been completed ★and there has been no break in service in excess of 90 days since the previous check ★ and provided further that the results of the previous check are reviewed by the Security Officer of the activity. For the purpose of this Instruction, the Security Officer is that individual who has responsibility for processing clearances for access to classified matter.★If there has been a break in service in excess of 90 days since the previous check, a current National Agency Check must be completed, with satisfactory results. Exception to the requirements of a preassignment NAC may be taken only as authorized by NCPI 29.7-5a.★

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Determination as to whether or not the assignment of the employee to the position in question is clearly consistent with the interests of the national security will be made by the Commanding Officer, after receiving advice from the Industrial Relations Officer and the Security Officer. The Remarks section of the personnel folder copy of the Standard Form 50 effecting the personnel action will be stamped "Processed under E. O. 10450", dated and initialed by the person delegated such authority under NCPI 135.2-3a or c, as appropriate.

(2) An employee may be moved from a non-sensitive position, or from a sensitive-noncritical position to a sensitive-critical position by effecting any of the personnel actions listed above, provided that a ★previous★ Background Investigation as defined in Chapter 15, United States Navy Security Manual for Classified Matter, or its equivalent, has been completed with satisfactory results ★and there has been no break in service in excess of 90 days since the completion of the previous investigation, and provided the results of the previous investigation are reviewed by the Security Officer of the activity. Determination as to whether the assignment of the employee to the position on the basis of a previous Background Investigation or its equivalent is clearly consistent with the interest of the national security will be made by the Commanding Officer, after receiving advice from the Industrial Relations Officer and the Security Officer. Questions as to whether an existing investigation meets the requirements of a Background Investigation as defined in Chapter 15, United States Navy Security Manual for Classified Matter, will be referred to the appropriate District Intelligence Officer for determination. If a previous investigation is found to meet these requirements, the Remarks section of the personnel folder copy of the Standard Form 50 effecting the action will be stamped "Processed under E. O. 10450," dated and initialed by the person delegated such authority under NCPI 135.2-3a or c, as appropriate. If the previous investigation does not meet the requirements, a Background Investigation must be completed under the provisions of NCPI 29.7-6a(1). If the previous investigation meets the requirements of a Background Investigation as defined in Chapter 15, United States Navy Security Manual for Classified Matter, but there has been an intervening break in service in excess of 90 days, additional or supplemental investigation must be completed to bring the previous investigation up to date. Exception to the requirements of a preassignment Background Investigation may be taken only as authorized by NCPI 29.7-6a(2). No exception to the requirement of a preassignment National Agency Check may be taken.★

(3) If a National Agency Check or Background Investigation is required under (1) or (2) above, request therefor will be submitted to the appropriate District Intelligence Officer on OPNAV Form 5520-1, Request for Investigation for Personnel Security Clearance. The request should clearly state that this is a request for a preappointment investigation required under E. O. 10450. ★(See NCPI 29.8-Encl. 12 and Encl. 13 for processing of National Agency Checks).★

b. Non-sensitive positions.--An employee may be moved into a non-sensitive position by effecting any of the personnel actions listed above, provided that there has been a previous favorable check under ★Executive Order 9835 (Part I or Part VI check, or both) or under Executive Order 10450 and there has not been a break in service in excess of one year. If there

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has been no previous check under E. O. 9835 or E. O. 10450, or if there has been a break in service in excess of one year, the provisions of NCPI 29.8-Encl. 11 for processing of National Agency Checks will be followed.★

7-13. SECURITY INVESTIGATIONS FOR EMPLOYEES WHO ARE PROMOTED, REASSIGNED, OR CHANGED TO LOWER GRADE.

a. Authority.--Under Executive Order 10450 employees who are promoted, reassigned or changed to lower grade are subject to investigation as stated below.

b. Investigative requirements.--The investigative requirements for filling positions by promotions, reassignment, or change to lower grade shall be the same as that set forth in NCPI 29.7-12a or b, as appropriate, except as provided in c below.

c. Special investigative requirements.--When a promotion, reassignment or change to lower grade is the result of a reclassification as defined in NCPI 156.2-1aa, and it is determined that the incumbent is the employee who should be affected by the position change, the employee should be considered, for security purposes, as an incumbent of he position to which promotion, reassignment or change to lower grade is contemplated. In such instances, the investigative requirements set forth in NCPI 29.7-12 shall apply, except that the employee so affected may continue to occupy the position while any necessary investigation is being processed.

SECTION 8, ENCLOSURES

8-1. Executive Order 10450.

8-2. Executive Order 10491.

8-3. Extract of Section 9A of the Hatch Act.

8-4. List of organizations designated by the Attorney General pursuant to Executive Order No. 10450.

8-5. Public Law, 733, 81st Congress.

8-6. Suggested form of invitation to witnesses.

8-7. Sample order convening a security hearing board.

8-8. Sample opening statement.

8-9. Investigative requirements under Executive Order 10450.

8-10. Suggested Counsel to Employees under the Provisions of NCPI 29.2-9c(14).

8-11. Procedural Instructions - National Agency Check and Written Inquiries for Non-sensitive Positions.

8-12. Procedural Instructions - National Agency Check and Written Inquiries for Sensitive-noncritical Positions.

8-13. Procedural Instructions - Background Investigations Conducted by Naval Intelligence for Sensitive-critical Positions.

File No. - OIR 110

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EXECUTIVE ORDER 10450

SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118 j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate; or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may

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continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications, or omissions of material facts.

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51

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

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51

SEC. 9. (a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked. For the purposes described in section 11 hereof the Loyalty Review Board and the regional loyalty boards of the Civil Service Commission shall continue to exist and function for a period of one hundred and twenty days from the effective date of this order, and the Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency.

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SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Civil Service Commission in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Commission as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Civil Service Commission is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

SEC. 15. This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER

THE WHITE HOUSE
April 27, 1953.

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EXECUTIVE ORDER 10491

AMENDMENT OF EXECUTIVE ORDER NO. 10450 OF APRIL 27, 1953, RELATING TO SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT

By virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, et seq.), and as President of the United States, and finding such action necessary in the best interests of the national security, it is hereby ordered as follows:

Subsection (a) of section 8 of Executive Order No. 10450 of April 27, 1953, relating to security requirements for Government employment, is hereby amended by adding thereto at the end thereof paragraph (8) as follows:

"(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct."

DWIGHT D. EISENHOWER

THE WHITE HOUSE
October 13, 1953.

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EXTRACT OF SECTION 9A OF THE HATCH ACT

THE HATCH ACT
(Public--No. 252--76th Congress)

AN ACT

"To prevent pernicious political activities, approved August 2, 1939.....

* * * * * *

"Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

"(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

* * * * * *

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ORGANIZATIONS DESIGNATED UNDER EXECUTIVE ORDER NO. 10450

Compiled from Memoranda of the Attorney General dated April 29, July 15, September 28, 1953, January 22, 1954, April 4, September 21, and October 20, 1954

CONSOLIDATED LIST—NOVEMBER 1, 1955

This list is prepared solely for the information of Federal personnel officers and employers and for the convenience of persons completing applications for Federal employment. Membership in or affiliation with a designated organization is not factor to be considered by the departments and agencies of the Federal Government in connection with the employment or retention in employment of individuals in Federal service.

Abraham Lincoln Brigade
Abraham Lincoln School, Chicago, Illinois
Action Committee to Free Spain Now
Alabama People's Educational Association (see Communist Political Association)
American Association for Reconstruction in Yugoslavia, Inc.
American Branch of the Federation of Greek Maritime Unions
American Christian Nationalist Party
American Committee for European Workers' Relief (see Socialist Workers Party)
American Committee for Protection of Foreign Born
American Committee for Spanish Freedom
American Committee for the Settlement of Jews in Birobidjan, Inc.
American Committee for Yugoslav Relief, Inc.
American Committee to Survey Labor Conditions in Europe
American Council for a Democratic Greece, formerly known as the Greek American Council; Greek American Committee for National Unity
American Council on Soviet Relations
American Croatian Congress
American Jewish Labor Council
American League Against War and Fascism
American League for Peace and Democracy
American Lithuanian Workers Literary Association (also known as Amerikos Lietuviu Darbininku Literaturos Draugija)
American National Labor Party
American National Socialist League
American National Socialist Party
American Nationalist Party
American Patriots, Inc.
American Peace Crusade
American Peace Mobilization
American Poles for Peace
American Polish Labor Council
American Polish League
American Rescue Ship Mission (a project of the United American Spanish Aid Committee)
American-Russian Fraternal Society
American Russian Institute, New York, also known as the American Russian Institute for Cultural Relations with the Soviet Union
American Russian Institute, Philadelphia
American Russian Institute of San Francisco
American Russian Institute of Southern California, Los Angeles
American Slav Congress
American Women for Peace
American Youth Congress
American Youth for Democracy
Armenian Progressive League of America
Associated Klans of America
Association of Georgia Klans
Association of German Nationals (Reichsdeutsche Vereinigung)
Association of Lithuanian Workers (also known as Lietuviu Darbininku Susivienijimas)
Auslands-Organisation der NSDAP, Overseas Branch of Nazi Party
Baltimore Forum
Benjamin Davis Freedom Committee
Black Dragon Society
Boston School for Marxist Studies, Boston, Massachusetts
Bridges-Robertson-Schmidt Defense Committee
Bulgarian American People's League of the United States of America
California Emergency Defense Committee
California Labor School, Inc., 321 Divisadero Street, San Francisco, California
Carpatho-Russian People's Society
Central Council of American Women of Croatian Descent, also known as Central Council of American Croatian Women, National Council of Croatian Women
Central Japanese Association (Beikoku Chuo Nipponjin Kai)
Central Japanese Association of Southern California
Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront)
Cervantes Fraternal Society
Chinese Welfare Appeal, Inc.
Chopin Cultural Center
Citizens Committee for Harry Bridges
Citizens Committee of the Upper West Side (New York City)
Citizens Committee to Free Earl Browder
Citizens Emergency Defense Conference
Citizens Protective League
Civil Liberties Sponsoring Committee of Pittsburgh
Civil Rights Congress and its affiliated organizations, including:
Civil Rights Congress for Texas
Veterans Against Discrimination of Civil Rights Congress of New York
Civil Rights Congress for Texas (see Civil Rights Congress)
Columbians
Comite Coordinador Pro Republica Espanola
Comite Pro Derechos Civiles
(See Puerto Rican Comite Pro Libertades Civiles)
Committee for a Democratic Far Eastern Policy
Committee for Constitutional and Political Freedom
Committee for Nationalist Action
Committee for Peace and Brotherhood Festival in Philadelphia
Committee for the Defense of the Pittsburgh Six
Committee for the Negro in the Arts
Committee for the Protection of the Bill of Rights
Committee for World Youth Friendship and Cultural Exchange
Committee to Abolish Discrimination in Maryland
(See Congress Against Discrimination; Maryland Congress Against Discrimination; Provisional Committee to Abolish Discrimination in the State of Maryland)
Committee to Aid the Fighting South
Committee to Defend Marie Richardson
Committee to Defend the Rights and Freedom of Pittsburgh's Political Prisoners
Committee to Uphold the Bill of Rights
Commonwealth College, Mena, Arkansas
Communist Party, U. S. A., its subdivisions, subsidiaries and affiliates
Communist Political Association, its subdivisions, subsidiaries and affiliates, including:
Alabama People's Educational Association
Florida Press and Educational League
Oklahoma League for Political Education
People's Educational and Press Association of Texas
Virginia League for People's Education
Congress Against Discrimination
(See Committee to Abolish Discrimination in Maryland)
Congress of American Revolutionary Writers
Congress of American Women
Congress of the Unemployed
Connecticut Committee to Aid Victims of the Smith Act
Connecticut State Youth Conference
Council for Jobs, Relief and Housing
Council for Pan-American Democracy
Council of Greek Americans
Council on African Affairs
Croatian Benevolent Fraternity
Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan)
Daily Worker Press Club
Daniels Defense Committee
Dante Alighieri Society (between 1933 and 1940)
Dennis Defense Committee
Detroit Youth Assembly
East Bay Peace Committee
Elsinore Progressive League
Emergency Conference to Save Spanish Refugees (founding body of the North American Spanish Aid Committee)
Everybody's Committee to Outlaw War
Families of the Baltimore Smith Act Victims
Families of the Smith Act Victims
Federation of Italian War Veterans in the U. S. A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America)
Finnish-American Mutual Aid Society
Florida Press and Educational League (see Communist Political Association)
Frederick Douglass Educational Center
Freedom Stage, Inc.
Friends of the New Germany (Freunde des Neuen Deutschlands)
Friends of the Soviet Union
Garibaldi American Fraternal Society
George Washington Carver School, New York City
German-American Bund (Amerikadeutscher Volksbund)
German-American Republican League
German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft)
Guardian Club
Harlem Trade Union Council
Hawaii Civil Liberties Committee
Heimusha Kai, also known as Nokubei Heieki Gimusha Kai, Zaibei Nihonjin, Heiyaku Gimusha Kai, and Zaibei Heimusha Kai (Japanese Residing in America Military Conscripts Association)
Hellenic-American Brotherhood
Hinode Kai (Imperial Japanese Reservists)
Hinomaru Kai (Rising Sun Flag Society—a group of Japanese War Veterans)
Hokubei Zaigo Shoke Dan (North American Reserve Officers Association)

CSC FORM 385
REVISED NOVEMBER 1955

51

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Hollywood Writers Mobilization for Defense
Hungarian-American Council for Democracy
Hungarian Brotherhood
Idaho Pension Union
Independent Party (Seattle, Washington)
(See Independent People's Party)
Independent People's Party
(See Independent Party)
Independent Socialist League
Industrial Workers of the World
International Labor Defense
International Workers Order, its subdivisions, subsidiaries and affiliates
Japanese Association of America
Japanese Overseas Central Society (Kaigai Dobo Chuo Kai)
Japanese Overseas Convention, Tokyo, Japan, 1940
Japanese Protective Association (Recruiting Organization)
Jefferson School of Social Science, New York City
Jewish Culture Society
Jewish People's Committee
Jewish People's Fraternal Order
Jikyoku Iinkai (The Committee for the Crisis)
Johnson-Forest Group
(See Johnsonites)
Johnsonites
(See Johnson-Forest Group)
Joint Anti-Fascist Refugee Committee
Joint Council of Progressive Italian-Americans, Inc.
Joseph Weydemeyer School of Social Science, St. Louis, Missouri
Kaiun Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan)
Knights of the White Camellia
Ku Klux Klan
Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund), Kyffhaeuser Fellowship (Kyffhaeuser Kameradschaft)
Kyffhaeuser War Relief (Kyffhaeuser Kriegshilfswerk)
Labor Council for Negro Rights
Labor Research Association, Inc.
Labor Youth League
League for Common Sense
League of American Writers
Lictor Society (Italian Black Shirts)
Macedonian-American People's League
Maria Morgantini Circle
Maritime Labor Committee to Defend Al Lannon
Maryland Congress Against Discrimination
(See Committee to Abolish Discrimination in Maryland)
Massachusetts Committee for the Bill of Rights
Massachusetts Minute Women for Peace (not connected with the Minute Women of the U.S.A., Inc.)
Maurice Braverman Defense Committee
Michigan Civil Rights Federation
Michigan Council for Peace
Michigan School of Social Science
Nanka Teikoku Gunyo-kai (Imperial Military Friends Group of Southern California War Veterans)
National Association of Mexican Americans (also known as American National Mexico-Americans)
National Blue Star Mothers of America (not to be confused with the Blue Star Mothers of America organized in February 1942)
National Committee for Freedom of the Press
National Committee for the Defense of Political Prisoners
National Committee to Win Amnesty for Smith Act Victims
National Committee to Win the Peace
National Conference on American Policy in China and the Far East (a Conference called by the Committee for a Democratic Far Eastern Policy)
National Council of Americans of Croatian Descent
National Council of American-Soviet Friendship
National Federation for Constitutional Liberties
National Labor Conference for Peace
National Negro Congress
National Negro Labor Council
Nationalist Action League
Nationalist Party of Puerto Rico
Nature Friends of America (since 1935)
Negro Labor Victory Committee
New Committee for Publications
Nichibei Kogyo Kaisha (The Great Pacific Theatre)
North American Committee to Aid Spanish Democracy
North American Spanish Aid Committee
North Philadelphia Forum
Northwest Japanese Association
Ohio School of Social Sciences
Oklahoma Committee to Defend Political Prisoners
Oklahoma League for Political Education (see Communist Political Association)
Original Southern Klans, Incorporated
Pacific Northwest Labor School, Seattle, Washington
Palo Alto Peace Club
Partido del Pueblo of Panama (operating in the Canal Zone)
Peace Information Center
Peace Movement of Ethiopia
People's Drama, Inc.
People's Educational and Press Association of Texas (see Communist Political Association)
People's Educational Association (incorporated under name Los Angeles Educational Association, Inc.), also known as People's Educational Center, People's University, People's School
People's Institute of Applied Religion
Peoples Programs (Seattle, Washington)
People's Radio Foundation, Inc.
People's Rights Party
Philadelphia Labor Committee for Negro Rights
Philadelphia School of Social Science and Art
Photo League (New York City)
Pittsburgh Arts Club
Political Prisoners Welfare Committee
Polonia Society of the IWO
Progressive German-Americans, also known as Progressive German-Americans of Chicago
Proletarian Party of America
Protestant War Veterans of the United States, Inc.
Provisional Committee of Citizens for Peace, Southwest Area
Provisional Committee on Latin American Affairs
Provisional Committee to Abolish Discrimination in the State of Maryland
(See Committee to Abolish Discrimination in Maryland)
Puerto Rican Comite Pro Libertades Civiles (CLC)
(See Comite Pro Derechos Civiles)
Puertorriquenos Unidos (Puerto Ricans United)
Quad City Committee for Peace
Queensbridge Tenants League
Revolutionary Workers League
Rumanian-American Fraternal Society
Russian American Society, Inc
Sakura Kai (Patriotic Society or Cherry Association—composed of veterans of Russo-Japanese War)
Samuel Adams School, Boston, Massachusetts
Santa Barbara Peace Forum
Schappes Defense Committee
Schneiderman-Darcy Defense Committee
School of Jewish Studies, New York City
Seattle Labor School, Seattle, Washington
Serbian-American Fraternal Society
Serbian Vidovdan Council
Shinto Temples (limited to State Shinto abolished in 1945)
Silver Shirt Legion of America
Slavic Council of Southern California
Slovak Workers Society
Slovenian-American National Council
Socialist Workers Party, including American Committee for European Workers' Relief
Socialist Youth League (see Workers Party)
Sokoku Kai (Fatherland Society)
Southern Negro Youth Congress
Suiko Sha (Reserve Officers Association, Los Angeles)
Syracuse Women for Peace
Tom Paine School of Social Science, Philadelphia, Pennsylvania
Tom Paine School of Westchester, New York
Trade Union Committee for Peace
(See Trade Unionists for Peace)
Trade Unionists for Peace
(See Trade Union Committee for Peace)
Tri-State Negro Trade Union Council
Ukrainian-American Fraternal Union
Union of American Croatians
Union of New York Veterans
United American Spanish Aid Committee
United Committee of Jewish Societies and Landsmanschaft Federations, also known as Coordination Committee of Jewish Landsmanschaften and Fraternal Organizations
United Committee of South Slavic Americans
United Defense Council of Southern California
United Harlem Tenants and Consumers Organization
United May Day Committee
United Negro and Allied Veterans of America
Veterans Against Discrimination of Civil Rights Congress of New York (see Civil Rights Congress)
Veterans of the Abraham Lincoln Brigade
Virginia League for People's Education (see Communist Political Association)
Voice of Freedom Committee
Walt Whitman School of Social Science, Newark, New Jersey
Washington Bookshop Association
Washington Committee for Democratic Action
Washington Committee to Defend the Bill of Rights
Washington Commonwealth Federation
Washington Pension Union
Wisconsin Conference on Social Legislation
Workers Alliance (since April 1936)
Workers Party, including Socialist Youth League
Yiddisher Kultur Farband
Young Communist League
Yugoslav-American Cooperative Home, Inc.
Yugoslav Seamen's Club, Inc.

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PUBLIC LAW 733--81st CONGRESS

AN ACT

To protect the national security of the United States by permitting the suspension of employment of civilian officers and employees of various departments and agencies of the Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), as amended (5 U.S.C. 652), or the provisions of any other law, the Secretary of State; Secretary of Commerce; Attorney General; the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Secretary of the Treasury; Atomic Energy Commission; the Chairman, National Security Resources Board; or the Director, National Advisory Committee for Aeronautics, may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State (including the Foreign Service of the United States), Department of Commerce, Department of Justice, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Coast Guard, Atomic Energy Commission, National Security Resources Board, or National Advisory Committee for Aeronautics, respectively, or of their several field services: Provided, that to the extent that such agency head determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his suspension and within thirty days after such notification any such person shall have an opportunity to submit any statements or affidavits to the official designated by the head of the agency concerned to show why he should be reinstated or restored to duty. The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final: Provided further, That any employee having a permanent or indefinite appointment, and having completed his probationary or trial period, who is a citizen of the United States whose employment is suspended under the authority of this Act, shall be given after his suspension and before his employment is terminated under the authority of this Act, (1) a written statement within thirty days after his suspension of the charges against him, which shall be subject to amendment within thirty days thereafter and which shall be stated as specifically as security considerations permit; (2) an opportunity within thirty days thereafter (plus an additional thirty days if the charges are amended) to answer such charges and to submit affidavits; (3) a hearing, at the employee's request, by a duly constituted agency authority for this purpose; (4) a review of his case by the agency head, or some official designated by him, before a decision adverse to the employee is made final; and (5) a written statement of the decision of the agency head: Provided further, That any person whose employment is so suspended or terminated under the authority of this Act may, in the discretion of the agency head concerned, be reinstated or restored to duty, and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving on the date of suspension or termination, as appropriate, and the interim net earnings of such person: Provided further, That the termination of employment herein [illegible]d shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government: Provided further, That the head of any department or agency considering the appointment of any person whose employment has been terminated under the provisions of this Act may make such appointment only after consultation with the Civil Service Commission, which agency shall have

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the authority at the written request of either the head of such agency or such employee to determine whether any such person is eligible for employment by any other agency or department of the Government.

SEC. 2. Nothing herein contained shall impair the powers vested in the Atomic Energy Commission by the Atomic Energy Act of 1946 or the requirements of section 12 of that Act that adequate provision be made for administrative review of any determination to dismiss any employee of said Commission.

SEC. 3. The provisions of this Act shall apply to such other departments and agencies of the Government as the President may, from time to time, deem necessary in the best interests of national security. If any departments or agencies are included by the President, he shall so report to the Committees on the Armed Services of the Congress.

SEC. 4. Section 3 of the Act of December 17, 1942 (56 Stat. 1053), and section 104 of the Act of July 20, 1949 (Public Law 179, Eighty-first Congress), and section 630 of the Act of October 29, 1949 (Public Law 434, Eighty-first Congress), are hereby repealed.

Approved August 26, 1950

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SUGGESTED FORM OF INVITATION TO WITNESSES

_____ (Date)
Re: (Employee's Name)

My dear Sir:

You have given information with respect to the above-named employee and have not indicated that your identity was to be kept confidential or that you are unwilling to testify at the hearing at which the above-named employee will be examined. The hearing will be held at the above address, before this Board, on the ____ day of _____ at _____ o'clock. You are hereby invited to appear at the time and place above named and testify before this Board in the presence of the employee and his counsel. If you should be unwilling to testify in the presence of the employee or his counsel, you are hereby invited to testify before this Board in private.

If you are willing to testify but cannot do so on the date fixed, please indicate below a day or days on which you will be able to testify. The Board will try to meet your convenience.

Your appearance, in any event, must be to perform a public service, since our Board cannot pay witness fees or reimburse you for travel or other expenses.

Will you, therefore, kindly indicate what course you are willing to take in this matter? Will you please reply by checking or writing in your answers to the points below and return this at an early date.

Sincerely yours,

_____
Security Hearing Board

Check here:

1. ☐ I will come to the hearing and testify in the presence of the employee and his counsel, if any.
2. ☐ I will testify before the Board in private.
3. ☐ I will not testify.
4. ☐ I cannot testify on the date fixed but am willing to come on _____ or _____.
5. ☐ If I do not appear at the hearing, I am willing for the Board to read my statement and disclose my name to the employee at that time.
6. ☐ If I do not appear at the hearing, I am willing for the Board to read my statement to the employee, but my name is not to be disclosed.
7. ☐ I desire to make the following comments in answer to this letter:

_____
(Signature of Witness)

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SAMPLE ORDER CONVENING A SECURITY HEARING BOARD

CONFIDENTIAL

SECURITY INFORMATION

(WHEN FILLED IN)

DEPARTMENT OF THE NAVY

(EMPLOYING NAVAL ACTIVITY)

1. It is hereby ordered that a Security Hearing Board for the (employing Naval activity) be convened at (employing Naval activity, city and state) for the purpose of conducting a hearing, as prescribed by the act of 26 August 1950 (64 Stat. 476, 5 USC 22-1 et seq.), Executive Order 10450, and Navy Civilian Personnel Instructions 29, in the case of (name of employee who is the subject of the hearing).

2. Mr. _____ of the (department or agency and activity thereof) is hereby designated Chairman of said Board. Mr. _____ of the (department or agency and activity thereof) and Major _____ of the (department and activity thereof) are hereby designated members of said board.

3. The Board will convene at 9:30 A. M. on 22 June 1953 in Room _____, Building _____, of the (employing Naval activity) for the purpose of conducting this hearing. Findings and recommendations will be submitted to me as soon thereafter as possible to be transmitted to the Secretary of the Navy, in accordance with security instructions of the Department of the Navy.

4. All officers and employees of this activity are hereby directed to make available to this Board such aid and assistance as it may require for the expeditious conduct of this assignment. Mr. _____, Executive Secretary of the Security Hearing Board for the (employing activity), is designated to provide necessary liaison.

5. The Security Hearing Board convened hereunder is dismissed when its adjudication of the assigned case has been completed.

BY DIRECTION OF THE SECRETARY OF THE NAVY:

_____

(Signature and title of the head of the employing Naval activity)

CONFIDENTIAL
SECURITY INFORMATION
(WHEN FILLED IN)

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SAMPLE OPENING STATEMENT

1. The Chairman opens the hearing with a statement somewhat as follows: The Board will come to order: This Security Hearing Board has been constituted under the provisions of the security regulations of the Department of the Navy promulgated pursuant to the authority conferred by Executive Order 10450 and the Act of 28 August 1950. This Board has been convened in the name of the Secretary of the Navy by order of (the head of the Naval activity employing the subject of the hearing) dated _____. A copy of that order is available for your inspection but will not be read if there is no objection. The members of this Board are, myself (full name) an employee of (department or agency), and (names and agencies of other Board members).

2. Other persons in the room are identified and their connection with the case or their authority for being present is explained in very brief terms.

3. The Chairman then announces the case in hearing.

4. The Chairman announces that all testimony in the hearing is required to be given under oath or affirmation. The employee whose case is being heard is then asked to identify himself and is sworn.

5. The Chairman then continues with his opening statement along the following lines: Investigation has disclosed information upon which (the head of the Naval activity employing the subject of the hearing) has determined that your removal from employment pursuant to the provisions of Executive Order 10450 and the Act of 28 August 1950 may be necessary. This information and your written reply to the charges issued to you on _____ constitute the issues in your case. You have asked that you be given a hearing before this Board in person in order to support your reply. This is not a court of law and strict rules of evidence and court procedure are not followed. All information which is relevant or material to the issues in your case will be admitted and given such value as the Board shall decide. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire more fully into matters related to your case.

   The Board desires to elicit all available information in connection with the issues which have been raised. The Board will give full consideration to the fact that it may not have been possible to acquaint you with certain confidential information which the investigation has revealed nor the sources of such information. The members of this Board sincerely desire that employment not be denied to persons whose employment would be clearly consistent with the interests of the national security. We also sincerely desire that all employees be afforded full protection against unfounded accusations.

   You have the right (1) to participate in this hearing, (2) to be represented by counsel of your own choice, (3) to present witnesses and to offer other evidence in your behalf and in refutation of the charges brought against you, and (4) to cross-examine any witnesses offered in support of the charges. You can assist the Board in arriving at a fair and just determination in your case by full and frank answers to questions the Board may have and by confining your attention to what is directly related to your case. Questions as to the legality or constitutionality of these proceedings are not in issue and cannot be decided by this Board. You are also warned that deliberate misrepresentations, false statements, or concealment of material facts in this hearing may preclude this Board's finding that your employment is clearly consistent with the interests of national security. The transcript of this

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hearing will not include all material in the file of your case, in that it will not include reports of investigation, which are confidential. The transcript will not contain information concerning the identity of confidential informants or information which would reveal the source of confidential evidence. The transcript will contain only the evidence and the testimony actually taken at this hearing.

6. The letter setting forth the charges and the statements and affidavits by the employee in answer to such charges are then read.

7. Witnesses are sworn as they are called to testify. Generally, the Government witnesses will be called first, questioned by the Board and cross-examined by the employee or his counsel.

8. Then the employee presents his case. He and his witnesses are usually questioned first by the employee's counsel and then by the Board.

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VE REQUIREMENTS UNDER E.O. 10450

ss to SecNav ve in in al.	Sensitive-Critical Positions (Positions which involve responsibility for development or approval of war plans or items, and policy positions affecting over-all operations of Navy. Normally this will include all positions GS-14 and above; GS-12 and 13 positions with access to Top Secret; additional positions if designated by CO and certified to OIR Code 110.)	Nonsensitive Positions (All other positions)
	**Preappointment Background.	Post-appointment NAC (requested within 3 work days) and written inquiries.
AC and e se- e com-	Prior Background if no break in service occurred in excess of 90 days since prior Background. **Pre-Reemployment Background or prior Background brought up to date if above condition has not been met.	Prior record check and inquiry under E.O. 9835 or NAC and written inquiries under E.O. 10450 if no break in service occurred in excess of 1 year. Post-assignment NAC and written inquiries if above condition has not been met.
AC and ervice ent.	Prior Background if no break in service occurred in excess of 90 days since prior Background. **Preassignment Background or prior Background brought up to date if above condition has not been met.	Prior check under E.O. 9835 (includes Part VI check) or 10450 if no break in service occurred in excess of 1 year. Post-assignment NAC if above condition has not been met.
AC and ervice met. 1552-1(a)) rting	Prior Background if no break in service occurred in excess of 90 days since prior Background. **Preassignment Background or prior Background brought up to date if above condition has not been met.	Prior check under E.O. 9835 (includes Part VI check) or 10450 if no break in service occurred in excess of 1 year. Post-assignment NAC if above condition has not been met.
based fter s to	Background unless Background completed any time after employment by Navy. Background unless Background completed any time after employment by Navy.	No investigation required unless information of a security or suitability nature is received which warrants inquiry or investigation.

Remarks: 1. Absence on military furlough is not considered a break in service.
2. No investigation is required for moving an employee from a position of a given category of sensitivity to one of the same category of sensitivity unless there has been a break in service in excess of 90 days since the prior investigation for assignment to the sensitive position.
3. Results of checks and investigations must be reviewed by Security Officer. Security Officer is that individual responsible for processing clearances for access to classified matter. ★

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INVESTIGAT

Type of Personnel Action	Sensitive-Noncritical Positions (Duties requiring acc classified matter or positions designated by SecDe or CO.) NOTE: The investigative requirements noted below addition to clearance requirements set forth Chapter 15 of the U. S. Navy Security Manu
APPOINTMENT (New)	*Preappointment NAC and written inquiries.
REEMPLOYMENT (After break in service) (See Remark no. 1)	Prior record check and inquiry under E.O. 9835 or N written inquiries under 10450 if no break in servic curred in excess of 90 days since prior check. *Pre-Reemployment NAC and written inquiries if abo dition has not been met.
APPOINTMENT (Without break in service)) TRANSFER from other Agency) CHANGE OF HEADQUARTERS) CHANGE OF POST OF DUTY) (See Remark no. 2)	Prior record check and inquiry under E.O. 9835 or N written inquiries under E.O. 10450 if no break in occurred in excess of 90 days since prior check. *Preassignment NAC if above condition has not been
PROMOTION) REASSIGNMENT) CHANGE TO LOWER GRADE) (See Remark no. 2)	Prior record check and inquiry under E.O. 9835 or N written inquiries under E.O. 10450 if no break in occurred in excess of 90 days since prior check. *Preassignment NAC if above condition has not been NOTE: If action results from reclassification (NCPI incumbent may continue to occupy position d investigation.
INCUMBENTS*** (No personnel action involved.)	No investigation required if cleared under E.O. 983 on CSC record check and inquiry.
– If appointed from 1 Oct 1947 to 27 May 1953, incl.	NAC unless record check and inquiry or NAC made
– If appointed on or before 30 Sep 1947	30 Sep 1947 in connection with clearance for acce classified matter.

Legend: *Exception under 29.7-5a permitted if request for NAC made.
**Exception under 29.7-6a permitted if NAC completed and request for background m
***Incumbents (appointed prior to 28 May 1953) may continue to occupy positions pen completion of investigation unless derogatory information is developed.

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SUGGESTED COUNSEL TO EMPLOYEES UNDER THE PROVISIONS OF NCPI 29.2-9c(14)

A number of our citizens unwittingly expose themselves to unfavorable or suspicious appraisal which they can and should avoid. This may take the form of an indiscreet remark; an unwise selection of friends or associates; membership in an organization whose true objectives are concealed behind a popular and innocuous title; attendance at and participation in the meetings and functions of such organizations even though not an official member; or any or numerous other clever means designed to attract support under false colors or serving to impress an individual with his own importance.

It is advisable to study and seek wise and mature counsel prior to association with persons or organizations of any political or civic nature, no matter what their apparent motives may be, in order to determine the true motives and purposes of the organization in question. The simple principles of good citizenship require that all enthusiasm for well-sounding functions be tempered with the wisdom of full knowledge of the real forces and aims behind them, so that well-meaning citizens will not be unwittingly led into aiding and promoting forces which are contrary to their own basic beliefs.

You may be assured that the rights and liberties which devolve upon citizens of our country under a constitutional form of Government cannot arbitrarily be suspended or removed. The existence of these very same rights should encourage and inspire each one of us to so conduct ourselves that there cannot be the least concern on the part of our associates as to our adherence to the principles of this Government, or as to our reliability in futhering its defense against enemies within or without. This counsel is prompted by the Commanding Officer's sincere interest in the continued well-being of all employees of the activity.

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PROCEDURAL INSTRUCTIONS

NATIONAL AGENCY CHECK AND WRITTEN INQUIRIES FOR NON-SENSITIVE POSITIONS

I. Initiating a national agency check and written inquiries for a non-sensitive position.

1. Prepare in quadruplicate Standard Form 85 (Security Investigations Data for Non-Sensitive Positions). The Civil Service Commission requests the following additional information be shown on Standard Form 85: after "Title of Position" (Item 12) enter the grade or salary of the employee or the prospective employee; and, on all appointments to the competitive service insure that the Civil Service regulation number is entered in the box "Civil Service or other legal authority" (Item 15) (for example, for appointments made pending establishment of a register, show "CSR 2.302(a)"). ☆ The Standard Form 85 must clearly identify the name and address of the activity and the full first and middle names of the employee or prospective employee. In cases where the individual has no middle name, the designation (NMN) should be shown on the form. In rare instances where individuals have initials only for their first and middle names, the form should show (no given or middle name).☆

2. Prepare Standard Form 87 (Fingerprint Chart).

3. Submit to the appropriate office of the Civil Service Commission within three days after the appointee enters on duty,[1] the following:

a. First three carbons of Standard Form 85 (applicant is to sign original as well as the first carbon; original to be retained by the employing activity).[2]

b. Standard Form 87

c. The original application form on which the appointment was made.[3]

II. Processing results of national agency check and written inquiries for a non-sensitive position returned by the appropriate office of the Civil Service Commission.

1. The appropriate office of the Civil Service Commission will furnish to the employing activity (as designated in item 18 of Standard Form 85), the results of the national agency check and written inquiries.

2. The appointing officer shall review the results of the national agency check and written inquiries and determine whether the continued employment of the appointee is or is not clearly consistent with the interests of the national security.

3. If the decision is favorable to the appointee, the appointing officer shall note the application form "Processed under E. O. 10450" and initial and date the notation. The application form shall then be filed in the Official Personnel Folder; the results of national agency check and written inquiries furnished by the Commission shall be filed in the Security Office of the activity, there to be retained so long as the subject remains on the rolls of the activity.

4. If the decision is adverse to the appointee the appointing officer shall proceed in accordance with NCPI 29.6 or NCPI 29.4, whichever is appropriate. The application form shall be filed in the Official Personnel Folder without notation. The action taken in the case will be reflected in the Official Personnel Folder by copy of the Personnel Action Form, Standard Form 50, issued as a result of the action taken pursuant to NCPI 29.6 or NCPI 29.4. If the appointee is retained on the rolls of the activity, the results of national agency check and written inquiries shall be filed in the Security Office of the activity. If the appointee is separated from the rolls, the results of national agency check and written inquiries shall be disposed of in accordance with Section IV, below.

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III. Reporting action taken after review of results of national agency check and written inquiries.

1. The receipt of and action taken on the results of national agency checks and written inquiries shall be reported, with the exception noted in paragraph 2 below, by employing activities on the Quarterly Report of Agency Actions Under Executive Order 10450, Standard Form 77, which is submitted to the Chief of Industrial Relations (OIR Code 630).

2. It is the policy of the Civil Service Commission, if the results of the national agency checks and written inquiries are clearly favorable, not to furnish the investigative material to the employing activity unless specifically requested to do so. The Department of Defense has requested the Civil Service Commission to furnish to employing activities the results of all national agency checks and written inquiries, including those which are clearly favorable. The employing activity has the responsibility of assessing such clear cases under the security program, but the receipt of and action taken on such cases will not be reported by employing activities on Standard Form 77.

IV. Disposing of results of national agency checks and written inquiries when subjects thereof are separated from the rolls.

1. The results of national agency check and written inquiries shall be maintained by the employing activity as long as the person investigated is on its rolls. If the person is separated for any reason, except transfer to another Naval activity, the investigative file shall be returned by the employing activity to the U. S. Civil Service Commission, Bureau of Departmental Operations, Investigations Division, Attention: Security Operating Section, Washington 25, D. C., noted to show that the person has been separated. The investigative file returned to the Commission shall include only that investigative material which was furnished by the Commission. It will not include such items as copies of Standard Form 85P, application forms, or reports of investigation or voucher inquiries conducted by the employing activity or other activities of the Department of the Navy. Nor will it include reports of arrest record not furnished as part of an investigative file.

2. In cases of transfer to other Naval activities, the losing Naval activity shall forward the investigative file to the gaining Naval activity.

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[1]In the case of a reappointment, if it appears that the case may have previously received the required checks, submission of the forms may be deferred until the Official Personnel Folder has been obtained. However, if the break in service has been in excess of one year the required forms must be submitted within the 3-day deadline.

[2]The instructions on Standard Form 85, June 1953 edition, requires a signature on the original copy only. However, until the form is revised the appointee shall be instructed to sign the original and first copy. The signed original is needed for the activity file in the event prosecution is necessary. When the form is revised the instructions will require a signature on the original and first copy.

[3]The original application will be returned to the activity for inclusion in the appointee's Official Personnel Folder. Activities may, at their discretion, remove and retain in their files any examination papers attached to applications since they are not required in conducting investigations.

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PROCEDURAL INSTRUCTIONS

NATIONAL AGENCY CHECK AND WRITTEN INQUIRIES FOR SENSITIVE-NONCRITICAL POSITIONS

I. Initiating National Agency Check and written inquiries on applicants for sensitive-noncritical positions.

1. Prepare in quadruplicate Standard Form 85 (Security Investigations Data for Non-Sensitive Positions) adding across the top of S. F. 85 the following statement: "REQUEST FOR AN NACI FOR A SENSITIVE-NONCRITICAL POSITION WITH AN ADVANCE REPORT OF THE NAC." The Civil Service Commission requests the following additional information be shown on Standard Form 85: after "Title of Position" (Item 12) enter the grade or salary of the prospective employee; and, on all prospective appointments to the competitive service, insure that the Civil Service regulation number is entered in the box "Civil Service or other legal authority" (Item 15) (for example, for appointments made pending establishment of a register, show "CSR 2.302(a)"). ★ The Standard Form 85 must clearly identify the name and address of the activity and the full first and middle names of the prospective employee. In cases where the individual has no middle name, the designation (NMN) should be shown on the form. In rare instances where individuals have initials only for their first and middle names, the form should show (no given or middle name). ☆

2. Prepare Standard Form 87 (Fingerprint Chart).

3. Submit to the appropriate Civil Service Commission regional office (or, if the naval activity is located in the Washington, D. C., metropolitan area, to U. S. Civil Service Commission, Investigations Division, Attention: Security Investigations Section, Washington 25, D. C.) the following:

a. First three carbons of Standard Form 85. (Applicant is to sign original and first carbon. Original copy is to be retained by activity.)

b. Standard Form 87

c. ★ Original of ☆ Standard Form 57

II. Processing results of National Agency Check and written inquiries on applicants for sensitive-noncritical positions when returned by Civil Service Commission.

1. The Civil Service Commission Central Office Investigation Division will conduct a priority National Agency Check and report the results to the submitting activity on DI Form 372A, Advance Report of National Agency Check for Noncritical-Sensitive Position, to which a reply is required in some cases (see paragraph 4 below). The appropriate office of the Commission will initiate written inquiries on the case at the time the central office of the Commission initiates its priority National Agency Check. This action is prompted by receipt of the material specified in Item I above. The naval activity is no longer required to make a request for written inquiries in addition to the request for National Agency Check.

2. The Civil Service Commission will complete its priority National Agency Check before the written inquiries are completed. The Commission will furnish the results of the priority National Agency Check to the naval activity in advance of furnishing the results of the written inquiries. If the results of the National Agency Check are satisfactory to the appointing officer, and the security officer concurs in the decision of the appointing officer, the appointing officer may appoint the applicant to the position. The appointing officer and the security officer are cautioned, however, that the results of the National Agency Check represent but half of the required investigation. The results of the written inquiries represent the other half of the investigation. Therefore, when the results of the written inquiries are received, the appointing officer and the security officer must review them also and determine if the appointee is to be retained in employment.

3. It is necessary in every instance that the security officer concur in the decision of the appointing officer. If agreement cannot be reached, the matter should be referred to the head of the activity for decision.

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4. The following may occur during the process of conducting National Agency Checks and written inquiries. The completion and submission of the required forms cited are the responsibility of the appointing officer. The information to be entered on the forms should stem from the joint decision of the appointing officer and the security officer, wherever appropriate.

a. Advance report of clearly favorable NAC. If the results of the NAC are clearly favorable (Item 1 on DI Form 372A), no reply to DI Form 372A is required. If the Civil Service Commission finds that the written inquiries disclose derogatory suitability information warranting conversion to limited security investigation (NCPI 29.7-21) in a competitive case, the Commission will send CSC Form 337A, Notice that Further Inquiry is necessary in a case involving a Noncritical-Sensitive Position, to the naval activity and suspend further action in the case until the naval activity replies to the form. The appointing officer must reply to the form within 5 days of receipt.

b. Advance report of derogatory suitability information disclosed in NAC. If the NAC discloses derogatory or questionable suitability information (Item 2 of DI Form 372A), the Commission will furnish a summary of this information to the naval activity with the advance report on DI Form 372A and suspend further action pending receipt of reply to the Form. The appointing officer and the security officer shall review the summary and determine whether or not the applicant will be appointed. The appointing officer shall appropriately complete the reverse side of the DI Form 372A and submit it immediately to the appropriate office of the Commission in accordance with instructions printed on the Form.

If there is a very lengthy file in the Commission, no summary of this file will be furnished but a notice (DI Form 453, RECORD INFORMATION IN UNITED STATES CIVIL SERVICE COMMISSION INVESTIGATIVE FILES) will be attached to the advanced report (together with any information disclosed in other checks) that the file will be available for review at the Commission's central office. The naval activity shall proceed in accordance with NCPI 29.2-9b(1) and request the appropriate office of Naval Intelligence to inspect the files of the Investiagtions Division, U. S. Civil Service Commission, Washington 25, D. C., with regard to the material referred to in the Form DI 453, and furnish the naval activity with a summary of the findings. The appointing officer and the security officer shall review the summary and their decision on the matter shall be reported by the appointing officer by completing the Form DI 372A and submitting it in accordance with printed instructions thereon.

c. Advance report of referral to FBI as result of NAC. If the NAC discloses information warranting investigation by FBI under Section 8(d) of Executive Order 10450, the Commission will check Item 3 on the Form DI 372A sent to the naval activity. No further information will be furnished the naval activity at that time. The appointing officer must reply to the appropriate Commission office within 5 days by appropriately completing the Form DI 372A and submitting it in accordance with printed instructions on the Form.

d. Report of referral to FBI as result of written inquiries. If the Commission determines from results of the written inquiries that the case should be referred to the FBI for investigation under Section 8(d) of Executive Order 10450 the Commission will submit CSC Form 337A to the naval activity. The appointing officer must reply to the Form within 5 days of receipt.

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e. Unclassifiable fingerprints. Provision has been made on DI Form 372A for returning unclassifiable fingerprints (with CSC Form 239, Request for Refingerprinting with Instructions, attached) to the naval activity. Instructions on this form provide for resubmission of the new fingerprint chart to the appropriate office of the Commission, unless the case has been discontinued. If the case has been discontinued, the appointing officer shall so notify the appropriate office of the Commission.

5. Naval activities shall complete records on subject cases as follows.

a. Clearly favorable cases. When the information in both the results of the NAC and the replies to written inquiries is clearly favorable, the appropriate office of the Commission will close out these cases to the naval activity by mailing the complete results with CSC Form 355, Results of National Agency Checks and Written Inquiries under E. O. 10450 for Noncritical-Sensitive Position. The Commission will stamp the application form in each such case "Processed under Section 3(a), E. O. 10450." No reply by the naval activity to the advance Form DI 372A is required in these cases. If the appointing officer, with the concurrence of the security officer, determines, after review of the results of National Agency Check and written inquiries, that the employment, or retention in employment, of the person is clearly consistent with the interests of the national security, the appointing officer shall note the application form "Processed under E. O. 10450" and initial and date the notation. The application form shall be filed in the employee's Official Personnel Folder; the results of National Agency Check and written inquiries shall be filed in the security office of the naval activity, there to be retained so long as the subject remains on the rolls of the activity.

b. Cases with clearly favorable NAC but with minor derogatory suitability information in replies to written inquiries. These are cases in which the results of the NAC are clearly favorable but the replies to the written inquiries contain derogatory information that does not warrant conversion to a limited security case for further investigation. The appropriate office of the Commission will close out these cases to the naval activity by mailing the complete results with CSC Form 355. The Commission will stamp the application form in each such case "Results of Investigation Under Section 3(a) E. O. 10450 Furnished Requesting Agency." No reply by the activity to the advance report Form DI 372A is required in these cases. If the appointing officer and the security officer agree that the person is to be appointed or retained, the application form will be noted, initialed, dated, and filed in the same manner as in "a" above. If the appointing officer, with the concurrence of the security officer, determines after view of the National Agency Check and written inquiries that the continued employment of the appointee is not clearly consistent with the interests of national security the appointing officer shall proceed in accordance with NCPI 29.6 or NCPI 29.4, as appropriate. The application form shall be filed in the Official Personnel Folder without notation. The action taken in the case will be reflected in the Official Personnel Folder by copy of the Personnel Action Form, Standard Form 50, issued as a result of the action taken pursuant to NCPI 29.6 or NCPI 29.4.

c. Cases in which any derogatory suitability information was disclosed in the NAC, or seriously derogatory suitability information was disclosed in the replies to written inquiries. When any derogatory information is reported to the naval activity with the advance report of the NAC, the appointing officer of the naval activity is required to reply to the DI Form 372A. The Commission will take no further action in the case

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until the reply is received. If the NAC results were clearly favorable, but seriously derogatory information warranting conversion to a limited security case for further investigation is received by the Commission in the replies to written inquiries, the Commission so informs the naval activity by CSC Form 337A, to which the appointing officer must reply. The Commission will take no further action in the case until the reply is received.

(1) Reply that the person is dropped from consideration. If the appointing officer of the naval activity replies to the appropriate office of the Commission that the person is no longer being considered for appointment (Reply Item 1 of the Form), the Commission will close the NACI case as discontinued. The Commission will use CSC Form 473, RETURN OF APPLICATIONS AFTER NACI INVESTIGATIONS IN CASES OF PERSONS DROPPED FROM CONSIDERATION OR SEPARATED, to return the application unstamped to the naval activity. The Commission will attach to the application the unstamped copy of Standard Form 85 and the results of any preappointment investigation furnished by the activity. The appointing officer of the naval activity shall not stamp the application form. The appointing officer shall dispose of the application form in accordance with instructions given on the CSC Form 473.

In some such cases requiring special processing by the Commission, the Commission will retain the application form as a part of the files of that agency. The Commission will send CSC Form 474 (with unstamped copy of S. F. 85 and the results of any preappointment investigation furnished by the naval activity) to the naval activity for each case of this type. Provision is made at the bottom of CSC Form 474 for a reply from the appointing officer of the naval activity if the application in the case was received with a certificate of eligibles. The appointing officer shall furnish to the appropriate office of the Commission the name of the certifying office and the certificate number. The appointing officer shall return with his reply the Standard Form 85.

(2) Reply that the person was separated. If the appointing officer replies to the appropriate office of the Commission that the person was separated (Reply Item 2) the Commission will close out the case as discontinued. The Commission will return the application to the activity by CSC Form 473 and attach thereto the unstamped copy of the S. F. 85 together with the results of any preappointment investigation furnished by the naval activity. The appointing officer of the naval activity shall not stamp the application form. The appointing officer shall dispose of the application form in accordance with instructions given on the CSC Form 473.

In some such cases requiring special processing by the Commission, the Commission will retain the application form as a part of the files of that agency. The Commission will send CSC Form 475, NOTICE OF DISCONTINUANCE OF NACI INVESTIGATION AND RETENTION OF APPLICATION REGARDING AN EMPLOYEE, (with the unstamped copy of S. F. 85 and the results of any preappointment investigation conducted by the naval activity, attached) to the naval activity for each such case. The appointing officer shall verify that the person has actually been separated. If the person has not been separated, the appointing officer shall notify the Commission as soon as possible of that fact so that investigation will be resumed. If the person has actually been separated, the appointing officer shall file the CSC Form 475 in the person's official personnel folder in lieu of the application.

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(3) Reply that the person is still being considered or was appointed. If the appointing officer of the naval activity replies to the appropriate office of the Commission that the person is still being considered for appointment (Reply Item 3) or was appointed (Reply Item 4), further action by the Commission will depend on whether the position is in the excepted or competitive service, and whether or not the information disclosed appears to be disqualifying under the Commission's suitability standards.

(a) If the information in the file does not appear to be disqualifying under the Commission's suitability standards, the appropriate office of the Commission will furnish to the naval activity the complete results of the NACI with CSC Form 355 in cases involving both competitive and excepted positions. The Commission will stamp the application "Results of Investigation Under Section 3(a), E. O. 10450, Furnished Requesting Agency."

(b) The appointing officer and the security officer of the naval activity shall review the results of the investigation. If they determine that the employment, or retention in employment, of the person is clearly consistent with the interests of the national security, the appointing officer shall note the application form "Processed under E. O. 10450" and initial and date the notation. The application form shall be filed in the employee's official personnel folder; the investigative material shall be filed in the security office of the naval activity, there to be retained so long as the subject remains on the rolls of the activity. If the appointing officer and the security officer find adversely to the person, the appointing officer shall proceed in accordance with NCPI 29.6 or NCPI 29.4, as appropriate. The application form shall be filed in the official personnel folder without notation. The action taken in the case will be reflected in the official personnel folder by copy of the Personnel Action Form, Standard Form 50, issued as a result of the action taken pursuant to NCPI 29.6 or NCPI 29.4.

(c) If the information in the file is seriously derogatory but an excepted position is involved, the Commission will furnish the complete results to the naval activity on CSC Form 355 transmitted by CSC Form 354, RESULTS OF NATIONAL AGENCY CHECKS AND WRITTEN INQUIRIES IN A CASE INVOLVING AN EXCEPTED POSITION IN AGENCY WITH INVESTIGATIVE FACILITIES. The Commission will stamp the application "Results of Investigation Under Section 3(a), E. O. 10450, Furnished Requesting Agency." The appointing officer and security officer shall proceed in accordance with paragraph (b) above. If these officials cannot make a determination on the basis of the material provided by the Commission, the head of the activity shall request the appropriate office of Naval Intelligence to conduct whatever additional investigation is required to make a determination. The appointing officer and the security officer shall proceed in accordance with paragraph (b) above, after reviewing the results of the additional investigation.

(d) If the information in the file appears to the Commission to be disqualifying in a case involving a competitive position, the Commission will convert the case to a limited security case. The Commission will conduct further investigation in the case, if necessary. If the Commission's ultimate rating decision is favorable in an applicant case, the appropriate office of the Commission will furnish the complete results to the naval activity with CSC Form 355. The Commission will note the application "accept

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53

application" to indicate favorable Commission rating and, in addition, the regular closing action notation "Results of Investigation Under Section 3(a), E. O. 10450, Furnished Requesting Agency." The appointing officer and the security officer shall proceed in accordance with paragraph (b) above. On the other hand, if the Commission's rating action is adverse in an applicant case, the Commission will notify the individual of the ineligible rating. The Commission will note the application "Ineligible" and retain it as part of the investigative file of the Commission. The Commission will send a letter to the naval activity explaining that the Commission has rated the applicant ineligible and retained the application. The appointing officer of the naval activity shall notify the certifying office of the Commission of this action if the application was received with a certificate of eligibles.

III. Initiating national agency check and written inquiries on appointees to sensitive-noncritical positions.

1. In some cases, an emergency appointment is made to sensitive-noncritical position without prior investigation (NCPI 29.7-5a) and naval activities request the appropriate regional offices of the Commission (or Central Office Investigations Division, Civil Service Commission, Washington 25, D. C., for the Washington, D. C. metropolitan area) for a postappointment National Agency Check and Written Inquiries. The appointing officer shall initiate such investigation in exactly the same manner as set forth in Section I above except that the statement given there to be added across the top of S. F. 85 will not be used. In its stead, the following statement shall be added across the top of the S. F. 85: "REQUEST FOR A POSTAPPOINTMENT NACI FOR A SENSITIVE-NONCRITICAL POSITION."

IV. Processing results of national agency check and written inquiries on appointees to sensitive-noncritical positions when returned by Civil Service Commission.

1. No advance report of the national agency check will be made by the Commission in these cases. The advance report will be made only where the appointment is being held up pending receipt of the report of the NAC. If an appointment is shown in the case papers, none of the special instructions in Section II above for applicant cases involving sensitive-noncritical positions will apply.

2. The appropriate office of the Commission will furnish the naval activity the complete results of the NACI with CSC Form 355. The complete results will be furnished even in clearly favorable cases rather than only the stamped application (with copy of S. F. 85 attached).

3. The appointing officer and the security officer of the naval activity shall review the results of the National Agency Check and written inquiries. If they determine that the retention in employment of the appointee is clearly consistent with the interests of the national security, the appointing officer shall note the application form "Processed under E. O. 10450" and initial and date the notation. The application form shall be filed in the employees official personnel folder; the investigative material shall be filed in the security office of the naval activity there to be retained so long as the employee remains on the rolls of the activity. If the appointing officer and the security officer find adversely to the employee, the appointing officer shall proceed in accordance with NCPI 29.6 or NCPI 29.4, as appropriate. The application form shall be filed in the official personnel folder without notation by the appointing officer. The action taken in the case will be reflected in the official personnel folder by copy of the Personnel Action Form, Standard Form 50, issued as a result of the action taken pursuant to NCPI 29.6 or NCPI 29.4.

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4. When the complete results are furnished by the Commission in clearly favorable cases, the application will be stamped "Processed Under Section 3(a), E. O. 10450." This is a Commission notation and is not to be considered synonymous with that referred to in paragraph 3 above. The requirements of paragraph 3 pertain whether the results of the National Agency Check and written inquiries are clearly favorable or not.

5. If the naval activity notifies the appropriate office of the Commission before completion of the investigation that the employee has been separated, the Commission will discontinue the case and return to the naval activity the application, the unstamped copy of Standard Form 85 and the results of any preappointment investigation furnished by the naval activity. The Commission will transmit this material by CSC Form 473 unless the Commission anticipates further action in the case for its own purposes. The Commission will stamp the application form appropriately to reflect the stage of investigation at the time it was discontinued. The appointing officer shall make no notation on the application form, but shall file the application form in the official personnel folder. If the Commission anticipates further action in a case for its own purpcses, the Commission will retain the application form and use CSC Form 475 to transmit to the naval activity the unstamped copy of Standard Form 85 and the results of any preappointment investigation furnished by the naval activity. The appointing officer of the naval activity shall place the CSC Form 475 in the official personnel folder in lieu of the application form.

V. Reporting action taken after review of results of National Agency Check and written inquiries. Same procedure as Section III, NCPI 29.8-Encl. 11.

VI. Disposing of results of National Agency Checks and written inquiries when subjects thereof are separated from the rolls. Same procedure as Section IV, NCPI 29.8-Encl. 11.

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[1]See Footnote 2, NCPI 29.8-Encl. 11.

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PROCEDURAL INSTRUCTIONS

BACKGROUND INVESTIGATIONS CONDUCTED BY NAVAL INTELLIGENCE FOR SENSITIVE-CRITICAL POSITIONS

I. Initiating a Background Investigation for a sensitive-critical position.

1. Background Investigations for sensitive-critical positions shall be made by Naval Intelligence. Activities within a naval district or river command shall submit requests for Background Investigations to the naval district or river command Intelligence Officer. All other activities shall submit requests to the Chief of Naval Operations (Director of Naval Intelligence).

2. Requests for such investigations shall be initiated by the activity submitting to the appropriate office of Naval Intelligence the following:

a. A properly executed Request for Investigation for Personnel Security Clearance, OPNAV Form 5520-1, indicating clearly thereon that "THIS IS A REQUEST FOR A BACKGROUND INVESTIGATION FOR APPOINTMENT ☆ (CR EMERGENCY APPOINTMENT) TO A SENSITIVE-CRITICAL POSITION AS REQUIRED BY E. O. 10450" or "THIS IS A REQUEST FOR A BACKGROUND INVESTIGATION UNDER E. O. 10450 FOR PROMOTION, REASSIGNMENT, TRANSFER, ETC. (OR EMERGENCY PROMOTION, REASSIGNMENT, TRANSFER, ETC. UNDER THE EMERGENCY PROVISIONS OF NCPI 29.7-6a(2)) TO A SENSITIVE-CRITICAL POSITION." ☆ Parts 3 and 4 of the completed form shall be placed in the subject's personnel jacket to prevent duplication of investigative work in the event of transfer of the individual.

b. A properly executed Statement of Personal History, DD Form 398, in quadruplicate.

c. An Agency Check Request, OPNAV Form 5510-397.

d. Fingerprint Card, OPNAV Form 5510-2.

Incomplete or improperly executed forms will not be processed and will be returned to the originator for resubmission. In this connection it is pointed out that fingerprints should be taken by qualified personnel.

3. Upon receipt of the request from the activity, the appropriate office of Naval Intelligence will submit to the Civil Service Commission Standard Form 79, Notice of Security Investigation, in duplicate, informing the Commission that a Background Investigation has been initiated. This will be done whether the subject of the investigation is an applicant or an employee. ☆ The Standard Form 79 will be submitted in single copy only, and clearly marked "single copy only," if either a request has been or will be made to the Commission for a National Agency Check, or an experience brief has been or will be submitted to the Commission for a search of its files. Otherwise, the Standard Form 79 will be submitted in duplicate. When the Background Investigation is completed the appropriate office of Naval Intelligence will furnish the results to the activity for security adjudication. In those cases in which the subject of the investigation is an incumbent employee, or an appointee to a sensitive-critical position under emergency conditions as defined in NCPI 29.7-6a(2), the appropriate office of Naval Intelligence will forward to the Chief of Industrial Relations (OIR Code 110) Standard Form 74, Notice of Transmittal of Investigative Reports for Security Determination, in triplicate, at the time the final results of the Background Investigations are forwarded to employing activities for adjudication under Executive Order 10450. Similarly, the Standard Form 74 will be submitted in cases of Background Investigation in connection with promotion, reassignment, transfer, etc., to sensitive-critical positions effected under the emergency provisions of NCPI 29.7-6a(2), prior to a security determination on the basis of the Background Investigation. Standard Form 74 will not be submitted in those cases in which the subject of the investigation forwarded to the activity is an applicant for employment, or a candidate for contemplated promotion, reassignment, transfer, etc., unless the personnel action is effected under the emergency provisions of NCPI 29.7-6a(2).

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4. Submission of Standard Forms 79 and 74 is required only in cases of Background Investigation under Executive Order 10450 in connection with the personnel actions described in subparagraph 3 above. Standard Forms 79 and 74 should not be submitted for Background Investigations conducted for clearance requirements for access to classified matter as set forth in Chapter 15, U. S. Navy Security Manual for Classified Matter or other purposes.★

II. Processing results of Background Investigations. ★(See also NCPI 29.7-6)★

1. The results of the Background Investigation will be furnished directly to the employing activity. The employing activity shall process the case in one of the following ways, depending upon whether the subject of investigation is an applicant or an employee.

2. If the subject of investigation is an applicant, the appointing officer and the Security Officer shall review the file and determine whether or not the applicant is to be employed. If the appointing officer and the Security Officer determine that the applicant's employment is clearly consistent with the interest of national security the appointing officer shall effect the appointment, note the application form "Processed under E. O. 10450," initial and date the notation, and file the application form in the subject's Official Personnel Folder. If, on the other hand, the decision of the appointing officer and the Security Officer is adverse to the applicant, the appointment will not be effected. The Background Investigation material will be disposed of in accordance with instructions provided by the appropriate office of Naval Intelligence which furnished the file.

3. If the subject of investigation is an employee, the appointing officer and the Security Officer shall review the file and determine whether or not the employee's assignment to the sensitive-critical position is clearly consistent with the interest of the national security. If the appointing officer and the Security Officer concur in a decision favorable to the employee, the appointing officer will enter, initial and date the following notation in the employee's Official Personnel Folder: "The Background Investigation of (name) who holds (or is being assigned to) a sensitive-critical position has been completed with satisfactory results." The appointing officer shall complete Standard Form 72, Report of Action after Agency Full Field Investigation, and promptly forward the form, in ★duplicate,★ to the Chief of Industrial Relations (OIR Code 110). If, on the other hand, the decision of the appointing officer and/or the Security Officer is adverse to the employee, the entire case shall be referred to the Commanding Officer for decision. If the decision of command is adverse to the employee, the entire case shall be processed in accordance with NCPI 29.4 or 29.6, as appropriate. Following such processing, the responsible official shall complete Standard Form 72, and promptly forward the form in ★duplicate★ to the Chief of Industrial Relations (OIR Code 110). The Official Personnel Folder shall be noted to reflect the outcome of the processing. The Background Investigation file shall be disposed of in accordance with instructions of the office of Naval Intelligence which furnished the file.

★4. Submission of Standard Form 72, as described in subparagraph 3 above and NCPI 29.7-6, is required only in connection with Background Investigations under E. O. 10450 and then only if the subject of the Investigation is actually filling the sensitive-critical position by incumbency, or by appointment, promotion, reassignment, transfer, etc., under the emergency provisions of NCPI 29.7-6a(2). The Standard Form 72 will not be submitted when the personnel actions involving the sensitive-critical positions have not been effected by emergency action prior to a security determination on the basis of the Background Investigation. The Standard Form 72 will not be submitted, either, when the Background Investigation has been conducted for clearance for access to classified matter as required by Chapter 15, U. S. Navy Security Manual for Classified Matter or other purposes.★

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III. Securing Pre-appointment National Agency Check in emergency situation.

1. In an emergency situation, request may be forwarded to the U. S. Civil Service Commission, Investigations Division, Attention: Control Unit, Washington 25, D. C., for a pre-appointment National Agency Check, as follows:

a. Prepare in quadruplicate Standard Form 86 (Security Investigations data for Sensitive Position), adding across the top of S. F. 86 the following statement: "THIS IS A REQUEST FOR A PRE-APPOINTMENT NATIONAL AGENCY CHECK FOR A PERSON BEING CONSIDERED FOR APPOINTMENT TO A SENSITIVE-CRITICAL POSITION IN AN EMERGENCY SITUATION." A statement justifying the emergency situation must be appended to each such request. The Civil Service Commission requests the following additional information be shown on Standard Form 86: after "Title of Position" enter the grade or salary of the employee or the prospective employee; and on all appointments to the competitive service insure that the Civil Service regulation number is entered in the box "Civil Service or other legal authority" (for example, for appointments made pending establishment of a register, show "CSR 2.302(a)"). ★The Standard Form 86 must clearly identify the name and address of the activity and the full first and middle names of the employee or prospective employee. In cases where the individual has no middle name, the designation (NMN) should be shown on the form. In rare instances where individuals have initials only for their first and middle names, the form should show (no given or middle name).★

b. Prepare Standard Form 87 (Fingerprint Chart).

c. Submit to the U. S. Civil Service Commission, Investigations Division, Attention: Control Unit, Washington 25, D. C., the following:

(1) First three carbons of Standard Form 86 (Applicant is to sign original and first carbon (see Footnote 2 of NCPI 29.8-Encl. 11); original is to be retained by the activity.

(2) Standard Form 87

2. The results of the National Agency Check will be furnished the activity on CSC Form DI 372 (two copies will be received).

a. If the appointing officer, with the concurrence of the Security Officer, determines that the person is to be employed:

(1) The appointing officer shall complete the Form DI 372 by filling in Section A-1 of the reverse side of the Form.

(2) Return one copy of the Form DI 372 to the Civil Service Commission.

(3) If the head of the activity approves an exception as provided in NCPI 29.7-6a(2), an immediate request shall be made for the Background Investigation under the procedures provided in Section 1, above, forwarding therewith the remainder of the file received from the Civil Service Commission. NOTE: The Agency Check Request, OPNAV Form 5510-397 and the Fingerprint Card, OPNAV Form 5510-2, shall not be forwarded to the Naval Intelligence office in this situation. The activity shall inform the Naval Intelligence office in the letter forwarding OPNAV Form 5520-1 and DD Form 398 to the Naval Intelligence office that OPNAV Form 5510-397 and OPNAV Form 5510-2 are not being submitted because that element of the investigation has been completed by the Civil Service Commission and that the results of that National Agency Check are enclosed. This will save the District Intelligence Office repeating the National Agency Check already conducted and supplied by the Civil Service Commission.

b. If the appointing officer, with the concurrence of the Security Officer, determines that the person is not to be appointed:

(1) Check the appropriate block under Section D on the reverse side of the Form DI 372.

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(2) Return both copies of the Form DI 372 and attached investigative material (if any) to the Civil Service Commission.

c. If agreement cannot be reached between the appointing officer and the Security Officer as to whether the person is to be employed, the case will be referred to the Commanding Officer for decision. If decision of command is adverse to the employee, the case will be processed in accordance with b. above.

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INSTRUCTION 210

SEPARATIONS

Section 1. References
2. General provisions
3. Separation transfer, and Separation to accept ★indefinite appointment★ in another agency
4. Separation - Military
5. Resignation
6. Termination
7. Separation - Disqualification
8. Separation - Inefficiency
9. Separation - Disability
10. Separation - ★Displacement★
11. Abandonment of position
12. Death
13. Separation - Unable to accompany activity

Note: The following types of separations are covered by other Instructions:

Removal	NCPI 29 and 45
Reduction in force	NCPI 170
Retirement	NCPI 185

SECTION 1, REFERENCES

Paragraph No.
References 1-1

1-1. The following are references in connection with separation actions:

a. Civil Service Act (Act of 16 Jan 1883, 22 Stat. 403 as amended; 5 USC 632).

b. Section 6 of the Act of 24 Aug 1912 (37 Stat. 555; 5 USC 652) as amended by the Act of 10 Jun 1948. (Public Law 623, 80th Congress).

c. Performance Rating Act of 1950, Public Law 873, 81st Congress, approved 30 Sep 1950, effective 29 Dec 1950; 64 Stat. 1098; (5 USC 2001).

d. Section 161 of the Revised Statutes (5 USC 22)

e. Section 420 of the Revised Statutes (5 USC 430)

f. Veterans' Preference Act of 1944, as amended, 58 Stat. 387; 5 USC 851).

g. ★The Universal Military Training and Service Act, as amended (Public Law 51, 82nd Congress, 65 Stat. 1333; 5 USC 451).★

h. ★Federal Personnel Manual.★

SECTION 2, GENERAL PROVISIONS

Paragraph No.
Scope 2-1
General definition 2-2
Fixing the effective date of separation 2-3
Amending separation actions .. 2-4
Effect of failure to notify employee 2-5
Effect of unjustified or unwarranted separation 2-6
Commission investigation of failure to follow procedures 2-7
Clearance for reinstatement purposes 2-8

2-1. SCOPE.--The provisions of this Instruction govern all types of separation of employees of the competitive and excepted services other than removal (NCPI 29 and 45), reduction in force (NCPI 170), and retirement (NCPI 185), from the Naval and Marine Corps departmental and field services.

2-2. GENERAL DEFINITION.--Separations are personnel actions which result in the loss of employees from the Naval Establishment. This category does not include leave without pay, suspension, or furlough, as those actions do not involve absolute separation.

2-3. FIXING THE EFFECTIVE DATE OF SEPARATION.--In fixing the effective date, sufficient time★must★be allowed for proper action by the person possessing the appointing power and proper notice

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of such action to the employee. It must be so fixed as to comply with requirements for advance notice required by law or regulation, such as the requirements imposed under the Veterans' Preference Act of 1944. Special conditions which apply to only one type of separation are stated in the section of this Instruction pertaining to that type. See also NCPI 105 and NCPI 185. The effective date of separation may be a non-work day; such action may be beneficial to the employee where rights depend on the completion of a specified period of service (25 Comp. Gen. 273, B-52231 of 17 September 1945). See also NCPI 210.2-5 regarding failure to notify employee.

2-4. AMENDING SEPARATION ACTIONS.

a. Rescission.--As a general rule, when an authorized separation of an employee, by resignation or otherwise, becomes an accomplished fact, it cannot thereafter be rescinded or set aside by administrative action, even though the officer having authority to take it acted on misinformation or under erroneous assumption (21 Comp. Gen. 403, B-20822 of 3 November 1941). However, the separation of an employee does not become effective unless and until he receives proper notice thereof (22 Comp. Gen. 291, B-28964 of 30 September 1942). A separation action may be rescinded by the appointing power at any time before it is consummated, and, therefore, may be rescinded at any time before the employee receives proper notice of it. Rescission by a subordinate officer is ineffective unless it is confirmed, before consummation of the separation, by the person possessing the appointing power (26 Comp. Treas. 310, 24 October 1919). ★ Correction may be made to change the effective date of an accomplished separation to avoid an unintentional break in service made through administrative error ~~[illegible]~~ecting a movement between agencies (Comp. Gen. decision B-112802 of 2 Feb. 1953, unpublished. FPM RI-30.02). ★

b. Cancellation.--Under the provisions of Public Law 325, 58 Stat. 387, 5 USC 851 of 4 August 1949 and Public Law 741, 62 Stat. 575, 5 USC 868 of 22 June 1948, amending Sections 14 and 19 of the Veterans' Preference Act of 1944 the Commission, in an appeal under Sec. 14 thereof, may recommend restoration retroactive to date of separation. The employing activity may appeal but it is mandatory that it take the action if the Commission finally recommends ★ restoration. ★ In this case the restoration cancels the separation action. (See NCPI 135).

c. Amending nature of action.--The nature of a separation action may be amended after the action has become effective if subsequent review or investigation results in a positive finding that the nature of separation was in error or unjustified, and provided further that all required procedures have been complied with. (See also NCPI 210.5-3 as to acceptance of resignation.) If new evidence is uncovered after the action has become effective that would have altered the original decision in the case, or if the reasons or circumstances surrounding the separation should be amended in order to enable the Commission to determine rights to separation benefits under the retirement acts and eligibility for reemployment, an amendment may be effected to change the material included under "Remarks" and/or "Nature of Action" on the personnel action form. See also NCPI 135.7.

2-5. EFFECT OF FAILURE TO NOTIFY EMPLOYEE.--An employee who is not notified of separation action by the appointing officer until after the proposed effective date of separation, and therefore continues to work beyond that date, is entitled to compensation for services actually rendered until he receives the proper notice (22 Comp. Gen. 291, B-28964 of 30 September 1942).

2-6. EFFECT OF UNJUSTIFIED OR UNWARRANTED SEPARATION.--An employee entitled to the benefits provided by Public Law 623, 80th Congress, which amended Section 6 of the Act of 24 August 1912, whose separation after 10 June 1948 is found to be unjustified or unwarranted, and who is reinstated or restored on the ground that such separation was unjustified or unwarranted, is

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entitled to payment of compensation for the period of separation and shall for all purposes except the accumulation of leave be deemed to have rendered services during such period. This is applicable regardless of the fact that through force of circumstances the reinstatement may be to a different naval activity. See NCPI 45.6 ☆ for corrective action, and procedure when restoration is made because of procedural defects. ★

2-7. COMMISSION INVESTIGATION OF FAILURE TO FOLLOW PROCEDURES. --The Commission may investigate the separation of an employee when he establishes a prima facie case that the procedures under Regulation 9.102(a)(1) or Regulation 22 have not been followed.

a. Filing of request. --☆ Request for the investigation must be received by the Commission within 10 days from the effective date of separation. This time limit may be extended in the discretion of the Commission only upon a showing by the employee that circumstances beyond his control prevented him from filing a request for an investigation within the prescribed 10 days. ☆

b. Where to file request.--Employees of field activities should submit request for investigation to the appropriate regional office of the Commission. Requests of employees of the Departmental Service and overseas activities shall be submitted to the Central Office of the Commission, Washington, D. C.

c. Contents of request.--The request shall be made in a full and detailed statement. The Commission will determine whether the procedures have been followed and may request statements under oath, and supporting evidence.

d. Commission's decision.--When the Commission reaches a decision favorable to the person who requested investigation of his separation under the procedures of Regulation 9, it will recommend that the activity restore him to duty, and whenever possible the recommendation should be followed. When it is alleged that the procedural requirements of Section 14 of the Veterans Preference Act, on which Regulation 22 is based, have not been followed, the Commission may investigate not only the procedural requirements but also the merits of the adverse decision. In the case of persons entitled to appeal under Section 14, the corrective action recommended by the Commission is mandatory, and unless the activity appeals from the decision of the Commission, the provisions of the law become immediately operative. In Section 14 cases it is within the discretion of the Commission to include in its recommendation a provision that restoration be retroactively effective to the date of separation, and it is mandatory that the recommendation be followed.

2-8. CLEARANCE FOR REINSTATEMENT PURPOSES. --★ A former employee of the competitive service who has completed the probationary period and who was removed on charges, or resigned upon learning that the employing activity planned to prefer charges against him, or while charges, other than loyalty, are pending is not necessarily for that reason ineligible for further employment in the Government service. In those cases where the charges toward removal are sufficiently serious to require prior approval of the Commission for reentry into the service (see NCPI 180) he may submit a sworn statement to the appropriate office of the Commission, setting forth fully and in detail the facts surrounding his separation. The Commission may within its discretion make an investigation to determine his eligibility for further employment in the competitive service insofar as suitability and fitness are concerned. Where appropriate, it may refer the case to the Federal Bureau of Investigation. Such statement must be submitted within six months from the date of the separation, or 60 days after the date of the last adverse decision as a result of an appeal under CSC Regulation 22. The Commission will inform the individual of its decision. ★

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SECTION 3, SEPARATION - TRANSFER AND SEPARATION - TO ACCEPT ★INDEFINITE APPOINTMENT★ IN ANOTHER AGENCY

	Paragraph No.
General	3-1
Definitions	3-2
Civil Service Regulations	3-3
Procedures	3-4
Effective date	3-5

3-1. GENERAL.--The term "Separation-transfer," which was discontinued as a type of personnel action by Civil Service Commission instruction of 13 November 1950, was again brought into official use for inter-agency actions, effective 11 February 1952.

3-2. DEFINITIONS.

a. Separation-transfer.--Separation-transfer is separation, by noncompetitive movement without break in service of one work day, of a ★career or career-conditional employee★ to another government agency on a permanent basis.

b. Separation - to accept indefinite appointment in another agency.--Separation - to accept indefinite appointment in another agency is the action which may be taken to separate an ★indefinite★ employee who accepts an indefinite appointment but does not resign.

3-3. CIVIL SERVICE REGULATIONS.--Separation-transfer is applicable to the movement of an ★employee between the Naval Establishment and other government agencies under the provisions of C. S. Regulations 2.501 and 10.101. See NCPI 235.2.★

3-4. PROCEDURES.--An employee is not required to resign, and should not resign, in the effecting of a transfer. The separation will be effected by the issuance of a personnel action in accordance with the provisions of NCPI 135.7. In the event an employee leaves to accept an indefinite appointment in another government agency he may resign or be separated. If he does not resign, his separation can be accomplished by the issuance of a personnel action indicating the "nature of action" as "Separation - to accept indefinite appointment in_____."

3-5. EFFECTIVE DATE.--The effective date of a separation by transfer action will be the calendar day preceding the date of entrance on duty in the other agency. The personnel action shall not be issued until it is known that the employee has entered on duty. In the case of an employee who resigns, or in lieu thereof is separated to accept indefinite appointment in another agency, it is preferable that the date of separation be fixed without break in service as in transfer cases.★ See NCPI 210.2-4 for correction of separation action in event of error as to date of separation for transfer.★

SECTION 4, SEPARATION-MILITARY

	Paragraph No.
Definition	4-1
Provision for separation	4-2
Policy	4-3
Activity action at time employee leaves	4-4

4-1. DEFINITION.--Separation - Military is separation by administrative action upon the employee's entrance on active duty in the U. S. Military Service, or other similar organizations designated by law or regulation, and regardless of type of appointment under which serving.

4-2. PROVISION FOR SEPARATION.

a. General.--★Civil Service Regulation 35 provides that each career or career-conditional employee entering the armed forces of the United States will be furloughed or separated at the option of the employing agency. Employees of Naval activities will be separated, and at the time of return to duty will be considered as having been on military

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furlough during the period of absence. See NCPI 120.☆

b. Manner of separation.--Separation may be by administrative action or by resignation. Resignation may not be requested of an employee but he may be informed that separation may be by either action, and that if eligible for restoration his rights would be the same. Employees absent for periods of training duty shall not be separated from the rolls for that purpose; the leave regulations in NCPI 105 provide for such absences.

4-3. POLICY.--It is the policy of the Navy Department that employees shall be separated instead of being furloughed upon leaving a civilian position in a naval activity to perform active duty other than training (including refresher course) in the armed forces, or other similar organization designated by law or regulation. See NCPI 120.

4-4. ACTIVITY ACTION AT TIME EMPLOYEE LEAVES.

a. Initiating separation.--A personnel action request form will be prepared initiating the separation for military service except in those cases where an employee voluntarily submits his resignation for that purpose. In order that the employee may return to duty if he fails to pass the examination required for entry on active duty in the military service, the separation action will not be effected until it is known that he has entered upon active duty. An employee who resigns should be cautioned that his resignation should not be made effective until he has been accepted for military service and enters upon active duty. For convenience, an employee may be furnished an appropriate form and franked envelope for informing the activity as to whether or not he passed the examination and the active duty date. He should be informed that in event he is rejected for military service he must return to duty immediately, allowing for travel time when necessary, unless he secures approval of a leave of absence beyond the time he could return to duty. (See NCPI 120.2 for restoration in case an employee becomes separated before acceptability is determined.)

b. Effective date.--The effective date of separation by administrative action will be the day prior to the date of entry on active duty. Resignations also should be effective as of that date.

SECTION 5, RESIGNATION

	Paragraph No.
Definition	5-1
Policy	5-2
Acceptance and withdrawal of resignation	5-3
Exit interviews	5-4
Method of effecting	5-5

5-1. DEFINITION.

a. Resignation is separation at the employee's request whether or not supported by a formal resignation. A written resignation is preferred and is particularly valuable in case of appeal or question as to the effective date. It should be secured whenever possible. In the following examples it is particularly important that not only the written resignation be on record but that the confirmation thereof show the reason for resignation when submitted:

(1) Upon entry on active duty in the armed forces,
(2) After receipt of notice of separation in reduction-in-force action,
(3) After offer of reassignment or demotion in lieu of separation for reduction in force,
(4) When unable to follow position to another geographic locality, or upon transfer of function.

5-2. POLICY.

a. Advance notice.--When they wish to resign, Navy employees are expected to submit written resignations at least two weeks in advance of their last day of duty. It is recognized that this may not always be possible and failure to do so does not make a resignation ★ineffective. Neither would it ordinarily be regarded by the Civil Service Commission as a basis for barring the employee from further employment in the Federal Service. A resignation should always indicate the

54

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effective date.★

b. Resignation not to be requested or advised.--A resignation is a voluntary action on the part of the employee to effect his own separation. No employee will be requested or advised to submit a resignation. Neither may he be denied the right to resign although action may be pending to separate him for any reason. ★This is true even though the date of resignation may be the date scheduled for separation.★

c. Conditional resignation.--Conditional resignations are not acceptable. If an employee sets forth conditions under which he will resign, he should be advised that the acceptance of the resignation will be acceptance only of the fact of the resignation and will not constitute an agreement to the specified conditions. In such a case he may be allowed to withdraw the conditional resignation and, if he desires, resubmit an unconditional resignation.

d. Resignation form.--The reverse side of Standard Form 52, REQUEST FOR PERSONNEL ACTION, which provides space for "Resignation" should be used whenever practicable.★ A copy of the resignation should be retained by the employee.★

5-3. ACCEPTANCE AND WITHDRAWAL OF RESIGNATION.--Since a resignation is a voluntary act on the part of the employee and since the Navy has no right to reject it, the submission of a resignation whether formal or informal is regarded as a completed act on the employee's part. He may not withdraw his resignation unless the withdrawal is agreed to by the appointing authority or his designated representative. Under some circumstances, especially where the resignation has been informal or where steps must be taken to replace the resigning individual, it is advisable to confirm the fact of the resignation by some formal response. However, such response is not essential to the final consummation of the resignation. No action may be taken to require an employee to remain beyond the date specified by him in his resignation. See NCPI 210.4-4 in cases of resignation to enter military service.

5-4. EXIT INTERVIEWS.--It is considered desirable to determine the reasons why civilian employees voluntarily separate themselves from naval employment, and to give corrective attention to those reasons which can be remedied. Whether or not interviews are held is a matter for local determination.

5-5. METHOD OF EFFECTING.--No civil service or other authority need be shown on the personnel action form in case of resignation.

a. Effective date.--Official actions taken in case of resignation are confirmatory, and may be retroactively effective (see NCPI 135.2-4). The effective date of a resignation will ordinarily be the last day the employee was actually present for work, except as provided in NCPI 105.

b. When resignation is considered "involuntary."--An employee who resigns from his position under certain conditions may be considered for retirement purposes as involuntarily separated from the service. See FPM R5-38 and NCPI 185.

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c. Information to be shown on personnel action form.--See NCPI 135.7.

SECTION 6, TERMINATION

	Paragraph No.
Definition	6-1
Termination of limited time appointments	6-2

6-1.★ DEFINITION.--"Termination" is separation from temporary or excepted appointment at the expiration of the employee's appointment, or for a reason for which one of the separation terms listed in NCPI 135.7 Encl. 4 is not appropriate. However, this term is not to be used if the employee is serving in other than temporary appointment in an excepted position under Schedule B and has competitive status, or to other employees in in the excepted service who were given job protection as announced by the Civil Service Commission in Departmental

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Circular No. 789 of 24 January 1955.★

6-2. TERMINATION OF LIMITED TIME APPOINTMENTS.

a. General.--Whenever the term of employment of a temporary or excepted employee serving under an appointment limited to a specified period of time nears expiration, the employing office will determine whether or not the period of employment should be extended and the employee will be notified of the decision. (The period specified in an employment agreement for overseas appointment does not limit appointment to that period).

b. Abandonment of position.--★When a temporary employee appears to have abandoned his position, his appointment may be terminated, either with or without recourse to the procedure provided in NCPI 210.11 for separation because of unauthorized absence.★

c. Termination in reduction in force.--If termination actions are taken as part of a reduction-in-force program, the employees to be terminated will be★listed and selected as indicated in★NCPI 170.6-3 and 170.6-5.

d. Notice.--Whenever possible, employees serving under appointments limited to a period of one year or less should be given notice of termination in writing, at least 15 days before separation.

e. Effective date.--The effective date of termination usually will be the date determined by the appointing officer to be the last day the employee's services will be required. However, in the case of persons terminated under a reduction-in-force program, see NCPI 170.7-2. Termination actions may not be retroactively effective.

f. Personnel action forms and reports. --See NCPI 135.7.

SECTION 7, SEPARATION - DISQUALIFICATION

	Paragraph No.
Definition	7-1
Responsibility for enforcing conditions attached to appointment	7-2
Procedural steps and effective date	7-3

7-1. DEFINITION.--"Separation - Disqualification" is an action to separate an employee for failure to meet the conditions specified at the time of appointment, (such as failure to qualify in investigation, failure to qualify ★by conduct or capacity★during probationary period, etc.,) or because of information which, if known, would have disqualified the employee for the appointment.

7-2. RESPONSIBILITY FOR ENFORCING CONDITIONS ATTACHED TO APPOINTMENT.--It is the responsibility of the appointing officer to see that the probationary or trial period is utilized as fully as possible to determine the fitness of each employee, and to terminate his services during such period if he fails to demonstrate fully his qualifications for continued Federal employment (see NCPI 74.6). He shall be given a full and fair working trial before steps toward separation are taken.

7-3. PROCEDURAL STEPS AND EFFECTIVE DATE.--The procedural steps provided in NCPI 45.5-2 will be followed in separating employees for disqualification, ★except that during a probationary or trial period the informal hearing may be conducted by the Industrial Relations staff.★ See NCPI 210.2-3 regarding the fixing of the effective date. This date may not be retroactive.

SECTION 8, SEPARATION - INEFFICIENCY

	Paragraph No.
Definition	8-1
Policy	8-2
Procedural steps and effective date	8-3

8-1. DEFINITION.--"Separation - Inefficiency" is the action taken to effect the separation of an employee because of unsatisfactory performance of duties not resulting from a physical or mental condition.

a. If the unsatisfactory service results in separation during the probationary period this term is not to be used. The employee should be separated for "Disqualification," NCPI 210.7. If it

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involves willful negligence or dereliction of duty, removal action should be effected, as provided in NCPI 45. If it is the result of a physical or mental condition, ☆ disability retirement or separation for disability should be considered as provided in NCPI 210.9 and NCPI 185. ☆

8-2. POLICY.--Individuals who do not measure up to minimum requirements should be advised of their shortcomings and a program of help and assistance worked out to improve their performance. When that has been done and the individual is still incapable of performing satisfactorily, he should not be permitted to remain in his position. There are some situations where an employee is in a job beyond his actual capacity. In such instances reassignment ☆ under the procedures of NCPI 160 ☆ to duties commensurate with his skill is desirable, but if reassignment is not practicable he may be separated.

8-3. PROCEDURAL STEPS AND EFFECTIVE DATE.--The procedural steps provided in NCPI 45.5 will be followed in separating employees for inefficiency. See NCPI 210.2-3 regarding the fixing of the effective date.

SECTION 9, SEPARATION - DISABILITY

	Paragraph No.
Definition	9-1
Policy	9-2
☆When separation for disability may be effected	9-3☆
Procedures	9-4
Effective date	9-5

☆ 9-1. DEFINITION.--"Separation - Disability" is the action taken to effect the separation of an employee whose physical or mental condition renders him incapable of performing the duties of his position and who is ineligible for disability retirement, or who, after being advised by the employing activity that he is eligible to apply for disability retirement, refuses to do so. This type of separation includes separation because of legal incompetence.

9-2. POLICY.

a. Reassignment consideration.--It is the policy of the Navy Department that when an employee no longer can perform the duties of his position because of partial disability, thorough consideration will be given to his reassignment to another position the duties of which he can perform without being a hazard to himself or others. Reassignment will be without reduction in grade or pay if possible.

b. Legal incompetence.--It is the policy of the Navy Department that no employee will be separated for disability on the basis of legal incompetence until authoritative evidence is received which warrants such action. (See also NCPI 210.9-4c.)

c. Retirement eligibles.--An employee whose creditable service under the Civil Service Retirement Act aggregates 5 years or more, and whose mental or physical impairments apparently disable him for useful and efficient service, will be given opportunity to file application for disability retirement and to have the Civil Service Commission determine whether or not he is eligible for Disability Retirement benefits before any action is taken to separate him because of disability.

9-3. WHEN SEPARATION FOR DISABILITY MAY BE EFFECTED.

a. Conditions.--An activity may take action toward separation because of disability under the following circumstances when an employee cannot be reassigned:

(1) When an employee is not eligible for disability retirement because of insufficient service, and he is an employment hazard to himself or others, or he no longer can perform the duties of his position because of his physical or mental condition;

(2) When an employee who has sufficient service for disability retirement (NCPI 185) refuses to apply for such retirement, after having been advised that he is eligible to do so (or his legal representative refuses to file application for him);

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(3) When an employee with sufficient service for disability retirement, has filed application and the Civil Service Commission determines him ineligible for the benefits of disability retirement, and he is still considered to be an employment hazard to himself or others;

(4) When an employee with sufficient service for disability retirement has filed application, and the Civil Service Commission determines him to be ineligible for the benefits of disability retirement, but he no longer can perform the duties of his position satisfactorily because of his physical or mental condition.

b. Notifying eligibles of continued right to apply.--An employee with sufficient service for disability retirement who has refused to apply for disability retirement benefits (or his legal representative) will be informed in the separation notice, or by letter if he resigns, of his right to apply for disability retirement, and of the time limit for filing application. A copy of such notice will be filed in his personnel folder.

c. Reporting medical findings to the Civil Service Commission.--In the event an activity learns that an employee with sufficient service for disability retirement has filed application direct with the Civil Service Commission, it will forward to the Commission, for its use in making a determination in his case, such medical findings as it may have. This will apply even though the employee has already been separated.

9-4. PROCEDURES.

a. Determining fitness for duty.--Whenever it is observed that an employee has become physically or mentally incapable of performing the duties of his position, a written statement of the fact and circumstances shall be prepared. In referring the employee to a medical officer for medical examination, the procedures outlined in NPCI 88.3-9 should be followed. Determination may be based on statement of the employee's personal physician. See NCPI 105.9 for mandatory period of absence in non-pay status before an employee in receipt of injury compensation may be involuntarily separated by this action.

b. Notice.--The requirements of Civil Service Regulations 9 and 22 as to notice of proposed action are applicable and, in addition to the procedures of NCPI 88.3-9 for determining the employee's physical fitness for duty, the appropriate procedural steps of NCPI 45.5 will be followed in separating employees for disability. When the proposed separation is based on legal incompetence at least 15 days should be allowed for reply by the employee, or his legal representative.

c. Record of court order.--A transcript of the Court Order adjudging an employee mentally incompetent shall be filed in his personnel folder and, in addition to data required by NCPI 135, the following information shall be shown under "remarks" on the personnel action form:

(1) The date the court action was taken and the name of the person designated as guardian.

(2) A statement that the employee is, or is not eligible for retirement.

9-5. EFFECTIVE DATE.

a. "Separation - Disability" will be effective on the date determined by the appointing officer after consideration of the following:

(1) Where there remains unused sick leave to the employee's credit, or annual leave for which the employee cannot be paid in a lump sum; the effective date will be extended to permit use of such leave as provided in NCPI 105.

(2) Separations for disability may not be effected retroactively or prior to the date of expiration of any required notice period.

(3) In the case of an employee who is receiving injury compensation, separation for disability may not be effected prior to the expiration of the period of absence in a non-pay status provided in NCPI 105.9.★

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★SECTION 10, SEPARATION - DISPLACEMENT

	Paragraph No.
Definition	10-1
Employees subject to displacement	10-2
Authority for displacement, and notice period	10-3
Procedures	10-4

10-1. DEFINITION.--Separation - Displacement is separation of a temporary or indefinite employee in order to create a vacancy for a separated career or career-conditional employee.

10-2. EMPLOYEES SUBJECT TO DISPLACEMENT.--This type of separation will be used to effect the separation of:

(1) Temporary or indefinite employees (classified in retention Group III under C. S. Regulation 20.4) in response to a specific displacement order by the Civil Service Commission; or

(2) Indefinite employees (classified in retention Group III under C. S. Regulation 20.4) voluntarily by a naval activity in accordance with C. S. Regulation 9.105(b) in order to create vacancies for separated career or career-conditional employees who have received notice of separation by reduction in force within the preceding year.

10-3. AUTHORITY FOR DISPLACEMENT, AND NOTICE PERIOD.--The authority for displacement is C. S. Regulation 9.105(b). In displacement action under this authority retention Group III employees are not subject to the requirements of Regulation 9, 20, or 22 for the reason that their separation is considered as being made on order of the Commission. However, these employees will be given 30 days notice, and in a work or leave status whenever possible.

10-4. PROCEDURES.--See NCPI 170.9-4. ★

SECTION 11, ABANDONMENT OF POSITION

	Paragraph No.
Definition	11-1
Policy	11-2

11-1. DEFINITION.--Abandonment of position by an employee is quitting his post of duty, failing to return to duty at the expiration of an authorized period of leave, or failing to return from furlough (other than furlough which is a part of a notice period in reduction in force) when called. ★This term is not used when an agency elects to use regular removal procedures. ★

11-2. POLICY.--It is the policy of the Department to consider action toward separation of an employee who appears to have abandoned his position only on the basis of unauthorized absence, as provided in NCPI 45. The action "Separation - Abandonment of Position" will not be used. Receipt of a statement from an employee that he does not intend to return to duty may be considered as a resignation, and be so accepted. See NCPI 210.5.

SECTION 12, DEATH

	Paragraph No.
Definition	12-1
Policy	12-2
Notifying next of kin	12-3
Completing records	12-4

12-1. DEFINITION.--The personnel action "Death" is removal of an employee's name from the rolls upon his death.

12-2. POLICY.--No action will be taken to record separation of an employee because of death until authoritative information is received which substantiates proof of death. However, in those unusual cases in which death appears to be a certainty but there is no actual proof, the employee's name may be cleared from the rolls by recording as "Death - presumed."

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12-3. NOTIFYING NEXT OF KIN.--When practicable a representative of the employing activity should personally inform the next of kin when death of an employee occurs while in a duty status, or when otherwise appropriate. When distance prevents this action the activity should furnish the information by appropriate means of communication. In either case offer of such assistance as the circumstances warrant should be made.

12-4. COMPLETING RECORDS.--No civil service or other authority need be shown on the personnel action form to effect the recording of separation because of death.

a. Effective date. -- The effective date of separation because of death will be the date of the employee's death, but where date cannot be established it should be shown as presumed to have occurred on or about a certain date.

b. Death benefits.--The activity shall inform the proper persons as to death benefits, leave and salary payments, or other benefits, and initiate the filing of applications for such benefits. See NCPI's 90, 105, and 185.

c. Information to be shown on the personnel action form.--See NCPI 135. In the event an employee's name is removed from the roles as "Death - presumed" there should be included in the notations under "Remarks" on the personnel action form the circumstances under which death was presumed to have occurred. The source of information should be shown, with names of witnesses, if any. Copy of newspaper account should be attached, if available. Copies of the personnel action should be given the usual distribution for action or record purposes, with one copy to the person designated as next of kin. In all cases of death the words "This is to notify you of the following action affecting your employment" should be deleted from the form.

SECTION 13, SEPARATION - UNABLE TO ACCOMPANY ACTIVITY

	Paragraph No.
Definition	13-1
Procedure	13-2
Reassignment★ and priority certification★	13-3

13-1. DEFINITION.--"Separation - Unable to Accompany Activity" is a separation, other than by resignation, of an employee who is unable because of family or other personal reasons to accompany his position when it is moved to a new location. See NCPI 210.5-5 when employee resigns for the same reason.

13-2. PROCEDURE.

a. General.--When the location of an office or unit is to be changed to a new location because of decentralization, or because of the transfer of the functions of an organizational unit to another naval activity, or to another government agency an employee who is unable because of family or other personal reasons to accompany his position, and does not resign, will be separated under the above term if separation is necessary. See also NCPI 170.7-9 regarding the rights of employees in transfer of functions, and NCPI 210.5 regarding resignation when unable to accompany position.

b. Applicable regulations.--The notice and other requirements of Regulations 9.102(a)(1) and of Regulation 22 are applicable in effecting this type of separation, and the procedural steps of NCPI 45.5 will be followed.

c. Notice provision.--The notice of proposed action should show as the "cause" and reasons for the separation the facts of the decentralization or transfer of the functions, and the inability of the employee to accompany the activity or the organizational unit.

d. Voluntary or involuntary determination.--The separation (or resignation)

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will be effected as either voluntary, or involuntary. In the latter case the employee may be eligible for retirement benefits. See FPM R5-38 for determination factors.

e. Information to be shown on personnel action form. --See NCPI 135.

13-3. REASSIGNMENT ☆ AND PRIORITY CERTIFICATION. --☆ Employees who are separated under this type of action, either voluntarily or involuntarily, do not have a placement right as in reduction in force. However, every effort shall be made to reassign them locally. See also NCPI 170.9-5 for priority certification of retention Group I and II employees by the Civil Service Commission under the Separated Career Employee Program. ☆

File No. - OIR 240

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OIR, AsstSecNavAir 23 September 1954

COVER SHEET 529

Attached is a revision to NCPI 45, DISCIPLINARY ACTIONS, REMOVALS AND PROHIBITIONS. The present NCPI 45 should be removed from the NCPI volume and the attached revision inserted in its place.

REASONS FOR REVISION

This revision has been made to clarify and supplement former instructions, delete material which has served its purpose, and to incorporate certain changes which were previously issued by OIR Notices.

NCPI 45.2-3.--Material added to introductory paragraph.

NCPI 45.2-3d(5).--Clarified.

NCPI 45.2-3d(6).--Added to reflect that concurrent penalties are probibited.

NCPI 45.3-1.--Amended to exclude applicability of Standard Schedule to civilian Marine personnel of MSTS; requirements for reproducing Standard Schedule deleted since Schedule will be available at District Publications and Printing Offices.

NCPI 45.3-3b, c and e.--Amended for clarification.

NCPI 45.3-3g and h.--Added to explain use of charges.

NCPI 45.4-1b.--Changed to simplify.

NCPI 45.5-1.--Changed to explain purpose of procedure.

NCPI 45.5-2.--Rewritten to simplify.

NCPI 45.5-3.--Rewritten to combine Procedure B and C of previous editions. Emergency suspension material and material on appeals and records, formerly in other paragraphs, has been incorporated.

The former NCPI 45.5-7.--Hearings. Changed to simplify and renumber to NCPI 45.5-4.

NCPI 45.6-2.--Rewritten to simplify and provide that employees otherwise eligible are entitled to back pay when appropriate reviewing authority (including commanding officers of field activities) rules on the action.

NCPI 45.7-3.--Rewritten to simplify.

NCPI 45.7-4.--Changed to refer to NCPI 105 for questions concerning leave.

NCPI 45.7-5.--Changed to simplify and add reference to FPM concerning appeal procedures in Section 14 cases.

NCPI 45.8-4.--Changed to simplify the material on appeals from actions directed by the Civil Service Commission.

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NCPI 45.9.--Revised to eliminate material on character and suitability and confine material to procedure for processing arrest records. (Former section 45.9-1 has been combined with 45.2-3; Sections 45.9-2 and 3 have been eliminated because the material is covered by procedure in Section 45.5; Section 45.9-4 has been eliminated from NCPI 45 and this material will be treated in NCPI 210; Section 45.9-5 renumbered to NCPI 45.9.)

NCPI 45.10.--Title changed.

NCPI 45.10-1c.--Changed to include material from SecDef Memo of 28 January 1953.

The former NCPI 45.10-3.--Eliminated.

NCPI 45.10-4.--Changed to reflect revised policy on employee indebtedness. Part on loans to employees removed and renumbered NCPI 45.10-3.

NCPI 45.10-7.--Material on loss or damage to Government tools expanded.

NCPI 45.11-Encl. 1.--Revised. Provision made for central printing and distribution to field.

The former NCPI 45.11-Encl. 2.--Deferred suspension notification eliminated.

The former NCPI 45.11-Encl. 3.--Eliminated.

NCPI 45.11-Encl. 4.--Changed to reflect new indebtedness policy.

The former NCPI 45.11-Encl. 5.--Changed and renumbered to 45.11-Encl. 2.

The former NCPI 45.11-Encl. 6.--Note on usage added and renumbered to 45.11-Encl. 5.

NCPI 45.11-Encl. 7.--Revised and renumbered to 45.11-Encl. 3.

By direction of Assistant Secretary of the Navy for Air:

Geo A Holderness Jr

GEO. A. HOLDERNESS, JR.
Chief of Industrial Relations

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OIR, AstSecNavAir 23 September 1954

INSTRUCTION 45

DISCIPLINARY ACTIONS, REMOVALS, AND PROHIBITIONS

Section 1. References
2. General provisions
3. Standard Schedule of Disciplinary Offenses and Penalties
4. Responsibility for administration of discipline
5. Procedure
6. Corrective Action under Public Law 623
7. Section 14 Rights, Veterans' Preference Act
8. Removal or separation at the request of the Civil Service Commission
☆9. Arrest records from the Commission
10. Conduct of employees; general problems which may require disciplinary action; and miscellaneous prohibitions☆
11. Enclosures

SECTION 1, REFERENCES

Paragraph No.
References 1-1

1-1. The following are references in connection with disciplinary actions, removals, and prohibitions:

a. The Act of 24 Aug 1912, as amended by Public Law 623, 80th Congress (62 Stat. 354; 5 USC 652).

b. Federal Personnel Manual, Chapter S1 and Parts 9 and 22 of Chapter Z1.

c. Section 14, Veterans' Preference Act of 1944 (Public Law 359, 78th Congress), as amended by Public Law 325, 80th Congress (58 Stat. 390; 61 Stat. 723; 5 USC 863).

d. Section 161, as amended, Revised Statutes (5 USC 22).

e. Executive Order 8390 of 11 Apr 1940, entitled "Executive Order 8390, Amending the Executive Order of January 17, 1873, to Permit Employees of the Federal Government to Hold Certain Positions in the Schools and Universities of Any State, Territory, or Municipality."

★f. SecNav Instruction 11101.5 of 11 Aug 1953, "Work Performed by Civilian Federal Employees in the Maintenance of Public Quarters."★

SECTION 2, GENERAL PROVISIONS

Paragraph No.
Scope 2-1
Legal basis 2-2
General principles 2-3
Irresponsible charges by employees 2-4
★Veterans entitled to the benefits of Section 14, Veterans' Preference Act ..... 2-5★

2-1. SCOPE.--The provisions of this Instruction apply to all American citizen civilian employees of the Navy and Marine Corps departmental and field services★ except civilian Marine personnel of the Military Sea Transportation Service. CMPI 45 governs civilian Marine personnel and makes cross reference to this Instruction for applicable portions.★ The principles prescribed herein shall be adapted for use in administering alien and native employees, consistent with local laws, regulations and customs.

2-2. LEGAL BASIS.

a. Statutory provisions.--Section 6 of the Act of 24 August 1912, as amended by Public Law 623, 80th Congress, constitutes the basic law governing removal, demotion and suspension of civilian employees.

b. Civil Service Regulations.--The Civil Service Regulations as set forth in Chapter Z-1 of the Federal Personnel Manual, particularly Regulations 9 and 22, provide the minimum procedural requirements and the authority for effecting removals, demotions and suspensions. The Department, in developing this

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instruction, has not only complied with requirements of Regulations 9 and 22 but has supplemented them with procedures designed to achieve effective administration.

2-3. GENERAL PRINCIPLES.--☆ Most disciplinary actions are occasioned by the employee's failure to comply with a rule or custom governing social conduct, work procedure, safety practice, etc. The offenses listed in the standard schedule (see NCPI 45.11-Encl. 1) include many situations of this nature. Other offenses based on violation of Civil Service Regulations or statutes are listed in the Table of Miscellaneous Offenses and Penalties (see NCPI 45.11-Encl. 5). Even though a specific regulation or custom concerning employment has not been violated, information may be brought to the attention of management which reflects adversely upon the suitability and general fitness of an employee. Such information may come to management from a variety of sources such as reports of arrest records and reports from investigation of an employee's previous employment and background. On the basis of such information disciplinary action looking to removal may be initiated if warranted. The general charge of conduct unbecoming to a government employee may be used if appropriate. Otherwise the specific reasons which indicate the employee is undesirable should be used as the reasons for initiating action. Any of the above bases may be considered sufficient to initiate disciplinary action. When such action is initiated the following principles shall be observed: ☆

a. Purpose.--Disciplinary action shall be taken solely for the purpose of correcting offending employees and maintaining discipline and morale among other employees. Where this aim can be accomplished through orally admonishing the offenders, formal disciplinary action should not be taken.

b. Timing of the action.--Necessary disciplinary action should be initiated promptly after management learns of the offense.

c. Determining the facts.

(1) The primary function of disciplinary procedure prior to decision is to determine the facts, not to provide a means for prosecuting the employee.

(2) Employees will be considered innocent until contrary evidence is produced.

(3) A prima facie case against the employee must exist before disciplinary action is initiated. A prima facie case is one established by sufficient evidence to justify a presumption of guilt.

(4) The employee must be confronted with all the evidence that influences management's consideration of the case and must be permitted to defend himself against such evidence prior to decision regarding the action to be taken. ☆ When disciplinary action (including removal, suspension or demotion) is contemplated by management on the basis of classified information, the facts warranting such action must be developed in unclassified form, by separate investigation if necessary, so that the employee can be confronted with the reasons for the adverse disciplinary action. ☆

(5) It is management's responsibility to ascertain all pertinent facts prior to making a final decision and to uncover and attach due weight to factors supporting the employee's position whether or not the employee offers such factors in his own defense.

d. Determining the penalty.

(1) The penalty imposed or assigned shall be the minimum which may reasonably be expected to correct the employee and maintain general discipline and morale.

(2) The employee's work history, character, and potential should be considered in determining the severity of the penalty.

(3) The cost of removing the employee and recruiting and training another person should be weighed in terms of the cost of intensive re-orientation of the employee before removal action is taken.

(4) The denial of charges which are later established will not be the basis for

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increasing the penalty nor for additional charges.

(5) Past delinquency or misconduct may be used in determining the penalty provided the employee is notified in advance that the contemplated penalty is based partly on his past record and provided he is given opportunity to comment upon, or explain such record. In such instances, it is not intended that a rehearing be held on the specific issues for which appellant was previously disciplined, but rather that he be advised that those offenses will be considered in determining the appropriate penalty for the current offense, and be given opportunity, through noting the dates, times and circumstances of the offenses, to comment upon the past delinquency or past record.

(6) The assignment of concurrent penalties is prohibited. ★

e. Imposing the penalty. --At the time the penalty is imposed, the employee should be fully advised of the facts which support the action. He should be advised why, in view of the facts, disciplinary action in his case is necessary (i.e., to impress him with the importance of observing the rules of correct employee conduct and/or to maintain general discipline and morale). Where action other than removal is taken, he should be assured that everything possible will be done to assure his future success on the job.

f. Responsibility of supervisors.

(1) The immediate supervisor is responsible for maintaining discipline and morale among the employees he supervises and for initiating appropriate disciplinary action where the facts warrant such action.

(2) Supervisors must thoroughly understand the purposes of disciplinary action and must be trained for such responsibilities.

2-4. IRRESPONSIBLE CHARGES BY EMPLOYEES. --If in the course of disciplinary proceedings an employee makes false or unfounded charges or statements which slander or defame other employees, supervisors or officials or which reflect unfavorably on their honesty, integrity, motives, or efficiency, the proceedings will be stopped while the hearing official or board considers the matter. In view of the impropriety of taking any action which might be construed as unreasonably hampering the employee in presenting his case, determination will be made as to whether or not the objectionable statements are false or unfounded which slander or defame, and in a real sense attack the honesty, integrity, motives or efficiency of others. A distinction must be made between the employee's statements made to explain his actions or conduct and statements made for the purpose of discrediting and attacking other persons. If necessary, the hearing official or board may seek the advice of the commanding officer. If after due consideration the statements are considered to be of a nature warranting disciplinary action, the employee shall be advised that he will be held responsible for such statements. However, he shall be allowed to make a timely retraction of such statements in order to minimize, in so far as possible, the damage caused or to eliminate the need for the additional disciplinary action.

2-5. ★VETERANS ENTITLED TO THE BENEFITS OF SECTION 14, VETERANS' PREFERENCE ACT. --Veterans entitled to the benefits of the provisions of Section 14 of the Veterans' Preference Act of 1944 include ★persons who are permanent or indefinite preference employees, as listed in NCPI 245.4-1, who have completed a probationary or trial period in a position under the Civil Service Regulations or who have completed one year of current continuous employment in positions excepted from the competitive service of the Federal Government or the Government of the District of Columbia. The following are not included: Employees appointed for a period not to exceed one year, and "peacetime veterans" who have not established the present existence of a service-connected disability or who are not receiving compensation, disability retirement benefits, or pension by reason of Public Laws administered by the Veterans Administration, Department of the Army or the Navy Department.

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SECTION 3, STANDARD SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES

Paragraph No.
General statement 3-1
Purposes 3-2
Application 3-3

3-1. GENERAL STATEMENT.--The standard schedule of disciplinary offenses and penalties (NCPI 45.11-Encl. 1) is provided as a guide to heads of activities in the administration of discipline.☆ It applies to all employees of the Department of the Navy and the Marine Corps, departmental and field, except civilian Marine personnel of the Military Sea Transportation Service. Since the schedule is of the utmost concern to all employees, posting conspicuously throughout naval activities is required. The schedule will be printed centrally and stocked in District Publications and Printing Offices for distribution to field activities and the departmental service. The schedule provides a uniform code of penalties for a reasonably complete list of offenses.☆ The wide range of penalties is provided to give heads of activities flexibility in dealing with particular situations. In general, after consideration of all circumstances, the penalty assessed should be the minimum which may reasonably be expected to correct the employee and maintain discipline and morale among other employees.

3-2. PURPOSES.--The purposes of the schedule of offenses and penalties are:

a. To insure that like penalties will be imposed for like offenses when disciplinary actions are taken.

b. To develop on the part of employees generally a clearer understanding of what constitutes reasonable cause for disciplinary action.

c. To provide activities with a standard and uniform basis for disciplinary offenses and penalties, and to support management in its administration of disciplinary matters.

3-3. APPLICATION.--In applying these standard penalties, the following guides and instructions are provided:

a. Combination of offenses.--The schedule provides for disciplinary action in the case of a combination of any of the offenses listed. However, the preferment of more than one charge for a single offense (Example: "sleeping" and "loafing") is prohibited. In such cases, the more appropriate offense should be used and the proper penalty assessed. Where the infraction covers a combination of two or more normally unrelated offenses (Example: "intoxication" and "insubordination"), charges covering each offense should be preferred and a heavier penalty than that prescribed for any one such offense may be assessed.

b. Deferred suspensions.--☆ When a suspension is determined to be appropriate as a penalty, it may be invoked at once or deferred. If deferred, it is held in abeyance during the reckoning period contingent upon satisfactory conduct by the employee. If a subsequent offense of any kind is committed during the reckoning period, the suspension may may be invoked or considered in adjudging a heavier penalty for the subsequent offense. Deferred suspensions help reduce lost time and may be suitable in some circumstances. When a suspension is deferred, the employee should be told in writing of the specific conditions under which it will be held in abeyance. NOTE: Care must be exercised if a deferred suspension is put into effect because the employee fails to meet the contingency of good conduct or other specified condition. The suspension may be summarily carried out if the employee has no protective rights. If the employee is entitled to procedural protective rights, he must be accorded such rights before the deferred suspension is put into effect. This means he must be given a written notice of his failure to meet the condition, the right to reply, etc.

c. Disciplinary warnings.--The schedule provides for a warning as the minimum penalty for all offenses. A warning will be in writing, will specify the offense, will reference the discussion held with the employee, will advise the employee that he may appeal the warning under the established

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grievance procedure, and will be☆ properly dated and signed by the person authorized. A copy of each warning will be placed in the personnel folder of the employee concerned. Warnings may be considered in determining disciplinary action taken at later dates. No letter of warning should be issued until after the employee involved has been fully heard with regard to his position in the matter. Written charges and formal hearings are not necessary in such cases. ☆The disciplinary letter of warning should not be confused with other non-disciplinary oral or written warnings as used with performance ratings, abuse of sick leave, etc.☆

d. Admonitions.--Admonitions or oral reprimands for offenses which are not sufficiently serious to warrant letters of warning are to be distinguished from warnings. When admonitions or oral reprimands are ineffective, warnings should be issued.

e.☆ Considering the past record.--Only the past offenses which occurred within the previous two years should be considered. The employee must be advised of his right to answer with regard to the previous offenses cited in the charge. The charge should state the previous offenses and the penalties imposed or other action taken by management.☆

f. Reckoning period.--The reckoning period is a specific interval of time after an offense occurs. A repetition of the offense within the period calls for a more severe penalty as determined by the circumstances. Reckoning periods are not cumulative. They commence with the occurrence of the offense and expire absolutely at the end of the period of time specified for the offense. To identify the offense as the first, second or third within a reckoning period, review the record and determine if the employee has committed a like offense during the period, equal in length to the reckoning period, occurring just prior to the current offense. See NCPI 45.11-Encl. 3 for example.

★g. Offenses in schedule not to be used as blanket charges.--When presenting charges to the employee, a blanket statement of the offense from the schedule should not be used. Use only the parts which describe the employee's actual conduct, and leave out parts which do not apply. For example, if an employee used abusive language, which was not obscene, he should be charged with abusive language only and not with offense No. 27 in its entirety.

h. Use of the charge "Unsatisfactory Service".--The standard schedule provides for removal action on the basis of a current offense and three previous offenses provided all four offenses occurred within a twenty-four month period and two of the offenses are included in the standard schedule (See NCPI 45.11-Encl. 1). Disciplinary action may also be initiated on the basis of a current offense and past conduct or previous offenses which are not included in the schedule if the offenses are comparable to those in the schedule. The use of the charge "Unsatisfactory Service" in such circumstances is not recommended. It is better practice to inform the employee of the reasons for the contemplated action by describing the specific offenses whether or not the offenses are included in the schedule. If the reason for the contemplated disciplinary action cannot be described in terms of an offense, it should be possible to state the reason in terms of regulations or rules of general conduct which have been violated, or damage to or interference with management operations resulting from the employee's action. The factor of wilful negligence should be avoided since wilfulness is difficult to establish. Generally, the question of wilfulness may be discarded if the fact of negligence, failure, or dereliction of the employee is established.★

SECTION 4, RESPONSIBILITY FOR ADMINISTRATION OF DISCIPLINE

Paragraph No.

Responsibility of activity heads 4-1

Responsibility of Industrial Relations Departments, Bureau Civilian Personnel Offices, and Shop Person-

561

nel Supervisors 4-2
Responsibility of supervisors . 4-3

4-1. RESPONSIBILITY OF ACTIVITY HEADS.

a. General statement.--Heads of activities are responsible for the administration of disciplinary matters concerning employees under their jurisdiction. They must assure the proper training of supervisors for this function, and assure conformance with the requirements of NCPI 45.11-Encl. 2.

b. Delegation of disciplinary authority.

(1)★ Actions which are essentially disciplinary in character shall be signed by the official delegated such authority in accordance with NCPI 45.11-Encl. 2. Actions which are not essentially disciplinary in character shall be signed by the official delegated such authority in accordance with NCPI 135.2-3.★

4-2. RESPONSIBILITY OF INDUSTRIAL RELATIONS DEPARTMENTS, BUREAU CIVILIAN PERSONNEL OFFICES, AND SHOP PERSONNEL SUPERVISORS.--The Industrial Relations Departments, Bureau Civilian Personnel Offices, and Shop Personnel Supervisors are responsible for assisting civilian supervisors, officials and heads of activities at all levels in disciplinary matters; for reviewing disciplinary actions to see that they conform to prescribed regulations and procedures; for studying existing procedures and recommending changes therein; and for recommending final action to heads of activities when so requested. In no case should the Industrial Relations Department, Bureau Civilian Personnel Office, or Shop Personnel Supervisors make an administrative determination concerning★ disciplinary action,★ except for employees under their direct supervision. The function of the Industrial Relations Department, Bureau Civilian Personnel Office, and Shop Personnel Supervisors is purely advisory in all matters of discipline.

4-3. RESPONSIBILITY OF SUPERVISORS.

a. Policy.--It is the policy of the Department that civilian and military supervisors of employees be delegated appropriate responsibility for direction and discipline of employees under their jurisdiction. Both civilian and military supervisors are selected for their position because they possess qualities of leadership necessary for personnel administration. Consistent with the foregoing, employees generally will receive instructions or discipline only from or through their line supervisors, civilian or military. Employees who are guilty of delinquency or misconduct will be corrected by or through their line supervisors to insure that supervisors exercise maximum responsibility over their subordinates.

b. General authority of supervisors.--When any civilian or military supervisor observes infractions of the rules of the establishment and the immediate supervisor of the employee is not readily available, the observing supervisor should inquire into the circumstances and take such steps on the spot as appear warranted. Thereafter, he should locate the supervisor concerned, fully explain the circumstances to him, and place further responsibility for action in his hands. The supervisors to whom infractions are reported are required then to take appropriate action.

c. Military supervision of civilians.--Where military personnel, commissioned or noncommissioned, serve as immediate supervisors of civilians, such military personnel will exercise the normal responsibilities over such civilian employees as are exercised by civilian supervisors.

SECTION 5, PROCEDURE

Paragraph No.
General statement 5-1
Procedure "A" 5-2
Procedure "B" 5-3
★ ★
Hearings 5-4
Determination of eligibility for future Federal employment 5-5

5-1. GENERAL STATEMENT.

★a. The procedures described in this section relate solely to disciplinary action and must be used whenever disciplinary action is taken against a Navy

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employee. For exceptions to this general statement refer to the following: NCPI 45.8 (Removal or Separation at Request of Civil Service Commission); NCPI 45.3-3c (Disciplinary Warnings); NCPI 45.2-1 (action against native and alien non-citizen employees).

b. Two procedures are described. Procedure "A" is informal and is intended for use with employees who have no protective rights. However, it may be used with any employee when a letter of warning is contemplated as the penalty. Procedure "B" is formal and must be used in taking adverse disciplinary action against veterans or non-veterans who have acquired protective rights by completion of a trial period. Procedure "B" is a combination of Procedures "B" and "C" of previous issues of NCPI 45. It therefore provides procedure required by Section 14 of the Veterans' Preference Act when a veteran preference employee is discharged, suspended for more than 30 days, or reduced in rank or compensation.

c. Procedures "A" and "B" are intended for use in disciplinary action. Since they meet the requirements of law for taking action to remove, demote or suspend employees from duty they may be borrowed for use in taking non-disciplinary adverse actions. Other parts of NCPI may reference these procedures. Such reference is for procedure only. NCPI 45 provides authority solely for disciplinary actions. For authority in other types of adverse action see the appropriate NCPI.

d. The disciplinary procedure in this section should be initiated only after preliminary investigation or inquiry indicates that disciplinary action is necessary for the efficiency of the service, to correct the employee or to maintain general discipline and morale.

5-2. PROCEDURE "A."

a. Coverage.--This procedure will be used with the following employees:

(1) Employees serving a probationary or trial period (veteran or non-veteran).
(2) Employees without competitive status who are in excepted positions (Schedule A or B) and have not completed one year of current continuous employment in such positions (veteran or non-veteran).
(3) Non-veteran employees who occupy Schedule C positions regardless of status or length of service.
(4) Veteran employees who occupy Schedule C positions and have not completed one year of current continuous employment in such positions or who have completed such period of employment but are given a penalty other than those specified in Section 14 of the Veterans' Preference Act (Suspension for more than 30 calendar days, removal or reduction in rank or compensation).
(5) Employees serving under temporary appointments under Section 2.114 of Civil Service Regulations.
(6) Status quo employees.
(7) All other employees not included under the coverage of NCPI 45.5-3.

b. Discussion with employee.--Before action is taken against an employee listed in a above, the line official having authority to effect such action, or his designated representative, will hold an informal discussion with the employee at which he will be advised of the specific instances of misconduct, dereliction of duty, unsatisfactory performance of duty or other reasons for the contemplated action. The employee will be permitted to reply and present his side of the case. The line official shall make such inquiry or investigation as he considers necessary to assure himself of the facts in the case. The employee will be advised of the decision at the discussion if practicable. (Neither the Industrial Relations Officer nor Civilian Personnel Officer and members of their staffs nor Shop Personnel Supervisors shall conduct these discussions, although they may be present.)

c. Notice of decision.--The employee shall be notified in writing of the reasons for his suspension, demotion or removal, its effective date, any reckoning period involved and of his right to appeal the action (if not removal) through the established grievance procedure. When the penalty is a letter of warning these details may be included in the letter. The

56

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S. F. 50 may be used for the written notice when the penalty is suspension or removal. Removal of an employee in this category is not appealable to the Department.

d. Summary.--A brief summary of the charges, statements made by the employee and management officials, and the decision will be filed in the activity and a copy thereof will be given to the employee upon request.

e. Suspensions pending decisions.--No formal procedure is required to suspend employees covered by Procedure "A" pending decision. Suspension from duty pending decision should not be invoked without due cause.

5-3. PROCEDURE "B."

a. Coverage.--This procedure will be used with the following employees:

(1) Permanent or indefinite employees who occupy positions in the competitive service and have completed a probationary or trial period in such positions (veteran or non-veteran).

(2) Employees with competitive status who occupy a position in Schedule A or B (veteran or non-veteran).

(3) Employees without competitive status who occupy positions in Schedule A or B and who have completed one year of current continuous employment in such positions (veteran or non-veteran).

(4) When the penalty is removal, suspension for more than 30 calendar days, or demotion (reduction in rank or compensation), the additional provisions specified for veterans in the following procedure must be observed with permanent or indefinite preference eligible employees who have completed a probationary or trial period in positions in the competitive service, or have completed one year of current continuous employment in excepted positions (Schedule A, B or C.)

b. Steps in procedure.

(1) Advance notice.

(a) A written notice shall be given the employee at least 5 work days in advance of the proposed action.

(b) In the case of veteran preference employees when the proposed adverse action is removal, reduction in rank or compensation, or suspension for more than 30 calendar days, the advance notice shall be given at least 30 calendar days in advance of the action. (The day on which the notice is given to or received by the employee is not counted.) In cases where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed, the employee need not be given thirty (30) days advance written notice but must be given such advance notice as under the circumstances will be reasonable.

(2) Nature of action and effective date.--The advance notice shall indicate the nature of the proposed adverse action and its effective date.

(3) Specific charges.--The advance notice shall state any and all reasons for the proposed adverse action, specifically and in detail, including dates, specific instances and other data, sufficient to enable the employee to fully understand the charges and to adequately join issue with the proposed action. Where an employee's is considered as making appropriate a more severe penalty than the immediate offense, of itself, warrants under the Schedule of Penalties, the specific charges must set forth in detail the previous infractions and penalties which were invoked, and the employee must be advised that he may reply with respect to these previous infractions. Not more than two years of an employee's past record shall be considered in such connection.

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(4) Reasonable time to answer.

(a) A reasonable time (no less than 5 work days) shall be allowed employees for answering in writing the charges and notifications of proposed adverse action and for furnishing affidavits in support of such answers. "Reasonable time" shall depend on all the facts and circumstances in each case and shall be sufficient to afford the employee ample opportunity to prepare an answer and to secure affidavits. The employee shall be advised of the date by which his answer to the charges and affidavits must be submitted. The employee shall be advised that he will be granted a hearing, upon request, and may have a representative and witnesses. Hearings shall be in accordance with NCPI 45.5-4.

(b) The offer of a hearing will satisfy the right of the veteran preference employee to reply to the charges personally as well as in writing.

(5) Status during notice period.

(a) A statement will be included in the advance notice advising the employee as to the work or leave status in which he will be carried during the period of the notice. Normally the employee will be continued in an active duty status. Where it is not considered advisable from an official standpoint to retain him in an active duty status, he may be placed on annual leave without his consent. In unusual cases where the retention of the employee in an active duty status in his position during the notice period may result in damage to government property, would be otherwise detrimental to the interest of the government, or would be injurious to the employee, his fellow workers, or the general public, the employee may be:

1. temporarily assigned to duties in which these conditions would not exist,
2. placed on leave without pay with his consent or
3. suspended from duty.

(b) Emergency suspension.--If the employee is to be suspended during the period of notice, the advance notice must advise the employee of the reasons why he cannot be retained on active duty during the notice period and will inform him of his right to reply to such reasons within 24 hours after receipt of the notice. It is important to note that the reasons given for suspension should not be the same as those advanced in support of the contemplated disciplinary action. Following consideration of any reply, the employee will be advised in writing as to whether suspension will be required. This emergency suspension procedure applies to all employees covered by Procedure B. Veteran preference employees may not be suspended for more than thirty (30) calendar days under this emergency suspension procedure.

(6) Notice of final decision.--After all evidence relating to the charges has been considered, the employee shall be provided with a written decision. The decision, if adverse, shall state the reasons for the action to be taken and its effective date. The adverse decision

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must restate the charges presented in the advance notice of the proposed action and must include the findings made with respect to each charge specifically identified. The findings must be stated in specific terms but need not weigh the evidence pro and con. The findings should also state specifically what charges in the advance notice were found to be established and what charges, if any, were dropped as not sufficiently supported. If any of the charges presented in the advance notice are dropped, the adverse decision should state that the remainder of the charges are found sufficient to support the adverse action, or should state specifically what charge is used as a basis for the adverse action. Charges or specifications not presented in the advance notice must not be considered by management in arriving at the final determination and must not be included in the written adverse decision. In addition to the foregoing, the adverse decision shall state that any evidence submitted or answer made by the employee has been considered, and shall state the length of any reckoning period imposed, with notice that a repetition of the same offense during such period may result in a heavier penalty. The notice of final decision shall advise the employee of his right to appeal as indicated in (7) below. The notice of final decision shall be delivered to the employee at least 5 calendar days prior to the effective date of the adverse action.

(7) Right to appeal.

(a) All employees covered by Procedure "B" may appeal from removal action to the Office of the Secretary of the Navy via the commanding officer and the management control bureau or office. The appeal must be made within 10 days after the effective date of removal action. Less severe penalties, including suspension and demotion, may be appealed through the grievance procedure in accordance with the rules and time limits specified in NCPI 80. The notice shall inform the employee of these appeal rights.

(b) Veterans who are suspended for more than 30 calendar days, reduced in rank or compensation, or removed have the additional right to appeal to the appropriate office of the Civil Service Commission within ten (10) days after the effective date of the adverse action. Such veterans may choose which appeal right they wish to exercise, but may not file dual appeals.

1. Statement in notice of final decision.--The notice shall contain the following statement of appeal rights. Paragraph One and Paragraph Two or Three shall be used as appropriate.

PARAGRAPH ONE - (Use in all Section 14 cases.) "As a veteran preference employee, you have the right to appeal to the appropriate office of the Civil Service Commission within ten (10) days after the effective date of this adverse action, as provided by Section 14 of the Veterans' Preference Act of 1944, as amended. No appeal will be accepted by the Commission which is submitted after the expiration of this time if the delay is due to prosecuting an appeal with the Department of the Navy."

PARAGRAPH TWO - (Use when the penalty is removal) "You also have

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the right to appeal your removal to the Office of the Secretary of the Navy via the commanding officer of this activity and the management control bureau or office within ten (10) days after the effective date of this adverse action. An appeal to the Department will not be accepted if you elect to pursue your rights as a veteran preference employee by appealing to the Commission."

PARAGRAPH THREE - (Use in place of Paragraph Two when the penalty is a suspension of more than 30 calendar days or reduction in rank or rating.) "You also have the right to appeal to the Office of the Secretary of the Navy through the grievance procedure in accordance with the rules and time limits specified in NCPI 80. An appeal will not be accepted under the grievance procedure if you elect to pursue your right as a veteran preference employee by appealing to the Commission."

(8) Contents of appeals.

(a) All employees shall be advised that an appeal to the Secretary of the Navy must set forth the specific reasons, facts and circumstances which make them believe that the action taken was unjustified and unwarranted, and call attention to any procedural deficiency they have noted.

(b) A veteran preference employee who is given a Section 14 penalty (suspended more than 30 calendar days, reduced in rank or compensation, or removed) shall be advised of the following provisions concerning appeals to the Commission. An appeal under Section 14 to the Civil Service Commission must:

1. Be in writing;
2. Set forth in detail all the facts and circumstances of the adverse decision;
3. Be accompanied by copies of charges, answer, affidavits in support of answer, and notice of the adverse decision, and by such documentary evidence in support of the appeal as the employee may wish to submit;
4. State whether the employee desires to make a personal appearance or an appearance through or accompanied by a representative designated by him before a representative of the Commission;
5. Be supported by acceptable evidence of entitlement to preference and
6. Set forth detailed information regarding the employee's status, such as the date and nature of appointment and whether the employee has completed a probationary or trial period or 1 year of current continuous employment in the civil service of the Federal Government or District of Columbia, and any other date bearing on whether the employee is within the purview of Part 22 of the Commission's regulations.

(9) Record of case.--A copy of the

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advance notice, notice of hearing, the original of the transcript or summary of the hearing, the employee's answer and affidavits, if any, and other material relevant to the case shall be made a part of the activity's records of the case. Personnel action forms effecting the adverse action and pertinent records shall be filed in the employee's personnel folder in accordance with NCPI 135.

(10) Processing appeals.

(a) Appeal to the Office of the Secretary.--When an employee appeals from removal action, the appeal shall be forwarded promptly to Chief of Industrial Relations (OIR Code 215), via the bureau, office or service having management control, together with appropriate comments, all records pertaining to the case, and the appellant's personnel folder. Since no provision for a personal hearing in the Department is made in connection with appeals to the Secretary and the review of the action is based on the record alone, it is imperative that a complete picture of the circumstances be provided the Department. Therefore, the activity should review the record prior to submission to the Department in order that comment regarding unrefuted statements of the appellant, activity's basis for discounting the testimony of any witnesses, unusual circumstances which required the action taken, etc., may be included in the forwarding endorsement. Failure to do so may result in the improper sustaining of an appeal. A copy of the forwarding endorsement should be provided the appellant.

1. Action by Bureau or Office.--Action may be taken by the responsible Bureau, Office, or Service to reverse the removal action taken by an activity under its management control. When action satisfactory to the appellant is thus taken, OIR Code 215 will be informed. Where corrective action favorable to the appellant is not taken, the management bureau or office concerned will, after thorough analysis, prepare a brief of the case which will serve as a basis for review in the Office of the Secretary. The brief will conform to the following prescribed format:

Findings of fact;
Opinion;
Recommendations.

Comment concerning the adequacy or inadequacy of the procedure used and a statement showing the status (duty, annual leave, LWOP, etc.) of the employee, pending the effective date of removal, will be included in the findings of fact. The brief and the appeal record should then be forwarded to OIR Code 215.

2. Action by OIR.--The case will be promptly reviewed. Receipt of appeals will not be acknowledged to appellant and personal hearings will not be provided. The decision on the appeal will be based on the facts in the appeal record. The responsible Bureau or Office will be informed when review of the record indicates that the removal action must be reversed. At the option of the Bureau or

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Office the case will be returned for corrective action by the Bureau or Office. Otherwise, the activity concerned will be notified via the Bureau or Office of the corrective action required. When the appeal is denied, the appellant will be promptly informed and a copy of the decision sent to the Bureau and activity concerned.

(b) Appeals under other procedures.--Appeals will not be entertained under the above procedure if they are concerned with issues which have been previously entertained under the provisions of NCPI 75, by the Commission under the Veterans' Preference Act, or by any other properly constituted statutory authority. Care should be exercised in applying this principle to avoid refusing legitimate appeal rights to the employee. For example, an employee who has been refused the opportunity by the hearing officer to bring in the issue of racial discrimination in the course of a hearing in connection with a removal action, may not be deprived of his right to file an appeal under the provisions of NCPI 75 alleging racial discrimination. On the other hand, if the employee files a Fair Employment Appeal from removal action, an appeal to the Office of the Secretary from removal action under the provisions of this section will not be entertained. This would also apply to matters which may be appealed under the grievance procedure. For example, an appeal from demotion would not be accepted from the veteran under the grievance procedure if he also appealed the demotion to the Civil Service Commission.★

5-4. HEARINGS.

a. Purpose.--Hearings in disciplinary action cases are conducted solely for the purpose of obtaining facts on which an equitable decision may be based and to give the employee an opportunity to present his side of the case.★ Hearings are purely administrative proceedings; they are not courts nor are they governed by the legal rules of procedure and evidence.★

b. General conditions.--Hearings in accordance with these provisions will be held whenever action is taken under Procedure "B" and the employee requests such hearing in his reply to charges. Hearings may be held, in the discretion of management, when the employee fails to request such hearing if it is believed that hearing the case will lead to a better understanding of the issues and more equitable action. Hearings, when requested, should be scheduled as promptly as possible. Hearings will be conducted by the line supervisor authorized to take the action in question, or by another line supervisor designated to act for him. Where desirable, an advisory hearing board may be designated with one member acting as chairman. Shop Personnel Supervisors and officials of the Industrial Relations Departments or Civilian Personnel Offices may not serve as voting members on such boards.

c.★ Employee representatives.--In suspension and demotion cases, the employee may be represented by any fellow employee of his choice who is willing to represent him. In removal cases, the employee may be represented by any person of his choice who desires to represent him. In addition, the employee may be accompanied in removal cases by an advisor who may consult with and advise the representative. The advisor shall have no voice in the pro-

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hearings, but shall be permitted to speak to the hearing board or hearing official through the representative.★

d. Witnesses.--The employee may call on witnesses who have direct knowledge of circumstances and factors bearing on the case. Such employee witnesses named by the employee are required to attend to testify. Witnesses may be limited in number on the basis of fair standards which shall be explained to the employee and recorded, and normally shall be present at the hearing only while testifying.

e. Conducting the hearing.--In hearing cases covered by Procedure "B", the following standards and procedures shall be observed:

(1) The employee shall be advised of the purpose of the hearing and of his right to representation and to call witnesses in his behalf as described in a, c and d above.

(2) The employee shall be advised of the charges and of the contemplated penalty. The evidence in support of the charges will then be introduced. The evidence may be in the form of testimony of witnesses and participants and introduction of pertinent documents, materials and equipment. Where necessary, affidavits or depositions may be used, with the employee being allowed a reasonable time in which to obtain counter affidavits or depositions. Charges do not constitute evidence. Classified files may furnish valuable leads and result in the securing of proper and admissible evidence, but they may not be considered in determining guilt, innocence, or the penalty, unless the information contained therein or evidence obtained therefrom is made a part of the record and the employee is given fair opportunity to reply thereto. This means that before the information contained in classified files may be used in these hearings, the equivalent evidence in an unclassified form must be obtained and presented at the hearing.

(3) The employee shall be given full opportunity to reply to and refute the evidence and charges against him and to question all witnesses at the hearing.

(4) Witnesses shall be called individually, advised of the purpose of the hearing, cautioned to remain as factual as possible in their testimony,★ ★and advised that their testimony should not be discussed outside the hearing.

(5) The hearing officer shall make every effort to elicit all of the facts bearing on the case whether those facts support the charges or support the employee's position; to confront the employee with the witnesses against him if that is the employee's desire; to assure the employee's full understanding of all phases of the matter; and to confine the discussion and testimony to issues directly related to the case.

f. Hearing records.--An official record of the hearing will be made by the activity, including either a verbatim transcript of the testimony or a summary of each person's statements, for all hearings held under★ procedure "B". Activities having mechanical recording equipment available may use such equipment. Such use is advocated since the recording equipment will provide an accurate record which preserves the atmosphere of the hearing and may be checked, results in a saving in time and personnel, and may be used in training personnel concerned how to conduct hearings properly. The employee or his representative will be given a copy of the record of the hearing upon request. If the employee or his representative desire, they may, after reviewing the copy of the record, or listening to the "play-back" of the mechanical record, submit corrections to it on a separate statement, designating pages and lines which are questioned. Otherwise, it will be assumed that there is no disagreement on the record of the hearing. Where recording equipment is used, the mechanical record will be retained intact until the case is finally adjudicated.★

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5-5 DETERMINATION OF ELIGIBILITY FOR FUTURE FEDERAL EMPLOYMENT.--When an employee has been removed on charges (other than security) or has resigned upon learning the agency planned to prefer charges or while charges were pending (other than security), the Commission may receive the sworn statement of such employee, setting forth fully and in detail the facts surrounding his removal or resignation and within its discretion may make investigation to determine his eligibility for further employment in the competitive Federal service insofar as suitability and fitness are concerned. After such investigation, such employee will be advised whether the Commission as a result of the investigation has found him to be suitable for further employment in the competitive Federal service. No case will be considered under this provision unless submitted to the Commission within 6 months from the date of separation or 60 days after the date of the last adverse decision as a result of an appeal to the Commission under provisions of Section 14, Veterans' Preference Act of 1944.

SECTION 6, CORRECTIVE ACTION UNDER PUBLIC LAW 623

	Paragraph No.
General statement	6-1
Employees eligible	6-2
Conditions of eligibility	6-3
Rate of compensation	6-4
Retirement deductions	6-5
Leave credits	6-6
Refusal to perform duties	6-7
Oath of office and affidavit	6-8

6-1. GENERAL STATEMENT.--Public Law 623, 80th Congress, provides back pay for certain employees when improperly removed or suspended without pay. This Section contains the applicable regulations for granting back pay where suspensions and removals were involved which were found unjustified or unwarranted.

6-2. EMPLOYEES ELIGIBLE.

a. Non-veteran employees who have permanent competitive status and occupy positions in the competitive service at the time of suspension or separation are covered by the back pay provisions of Public Law 623. Non-veteran, temporary, probationary, and indefinite nonstatus employees, as well as employees in excepted positions, are excluded from the provisions of the Act (29 Comp. Gen. 29; B-83635 of 19 July 1949).

b. ★ Veterans who have permanent competitive status and occupy positions in the competitive service are eligible. Any veteran who is discharged or suspended under section 14 of the Veterans' Preference Act of 1944, as amended, is eligible. This includes permanent and indefinite veterans who have completed a probationary or trial period in positions under Civil Service Rules, or one year of current continuous employment in excepted positions. Veteran preference eligible employees serving probationary or trial periods and those holding temporary positions are not included (29 Comp. Gen. 29; B-83635 of 19 July 1949; 30 Comp. Gen. 137; B-98093 of 3 October 1950).

c. Eligible veterans or non-veterans who are reinstated or restored to duty based upon a finding by proper appointing or reviewing authority that the suspension, separation or removal action was unjustified or unwarranted, are entitled to the back pay provisions of Public Law 623. Proper appointing or reviewing authority as used herein includes the Civil Service Commission, the Office of the Secretary, the management bureau or office and the commanding officer of a field activity. ★

6-3. CONDITIONS OF ELIGIBILITY.

a. General conditions.--Eligibility for reimbursement under the provisions of Public Law 623 is contingent upon three conditions:

(1) the employee must be removed or suspended without pay after 10 June 1948,
(2) he must make answer to the charges or reasons proffered for the action, or appeal to proper authority, and
(3) he must be reinstated or restored on the ground that such

571

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removal or suspension was unjustified or unwarranted.

The back pay provisions of the Act do not apply to demotions under any circumstances. An otherwise eligible employee who is separated as a result of an unsatisfactory performance rating is entitled to compensation under the provisions of the Act if he is restored to duty because of successful appeal from such rating (28 Comp. Gen. 200; B-79027 of 28 September 1948). Although the Civil Service Commission's decisions under Section 14 of the Veterans' Preference Act may encompass rescission of adverse administrative actions and restoration to the rolls retroactively effective to the effective date of such adverse actions, compensation for a period of separation is not allowed if the suspension or separation was effected prior to 10 June 1948, the effective date of Public Law 623 (28 Comp. Gen. 489; B-81930 of 2 March 1949). Reinstatement or restoration of the employee need not be to the position from which separated in order that the back pay provisions of the law may apply (29 Comp. Gen. 29; B-83635 of 19 July 1949).

b. Cases involving procedural defects. --An eligible employee may receive back pay under the provisions of Public Law 623 only after adverse action is determined to be unjustified or unwarranted on the basis of the merits of the case (29 Comp. Gen. 209; B-88897 of 3 November 1949). A determination that an adverse action was procedurally defective does not entitle the employee concerned to retroactive compensation. However, where no action is initiated against an employee who is restored to duty because of a procedural defect, within 10 days after such restoration, it is assumed that there has been an administrative determination that the action was unjustified or unwarranted within the meaning of Public Law 623 which entitles the employee to compensation. Accordingly, when employees are restored to duty because of procedural defects, activities should after further consideration of the case and if appropriate, proceed as soon as possible to initiate procedurally correct action. Thereafter, if appealed, the cases will be considered on their merits.

6-4. RATE OF COMPENSATION.

a. Payment of compensation for the period of separation must be at the rate received on the effective date of suspension or separation and should not be adjusted to conform with provisions of salary or pay acts effective during the period of separation (28 Comp. Gen. 333; B-81369 of 26 November 1948). Since computation of compensation due is on the basis of the salary rate effective on the date of suspension or separation, step increases which would normally be effective during the period of suspension or separation are not considered in computing the amount of compensation to be paid the employee. The period of separation for which retroactive compensation is paid is considered service for the purpose of determining the step rate of compensation payable on and after date of restoration, even though such date may be in the middle of a pay period (28 Comp. Gen. 563; B-82633 of 11 April 1949). See NCPI 195.

b. In event the employee was in a non-pay status on the last day of service, prior to suspension or separation, the rate of compensation to be paid is that fixed by law for the position. (30 Comp. Gen. 114; B-97600 of 21 September 1950.)

6-5. RETIREMENT DEDUCTIONS. -- See NCPI 185.3-1c.

6-6. LEAVE CREDITS. --Leave taken immediately prior to the effective date of separation, although caused by the impending separation, may not be recredited. Compensation for periods of separation is computed for the entire period but the lump-sum leave payment, including the amount of tax withheld, is deducted therefrom and the amount of leave represented by the deduction is recredited to the employee's leave account (28 Comp. Gen. 333; B-81369 of 26 November 1948). Any permanent employee who is restored to a position as a result of appeal under the Veterans' Preference Act or as a result of appeal under any other author-

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ity or procedure is entitled to recredit of any annual or sick leave which remained to his credit upon separation (29 Comp. Gen. 29; B-83835 of 19 July 1949). Public Law 623 prohibits accumulation of leave during the period of suspension or separation.

6-7. REFUSAL TO PERFORM DUTIES.--An employee who refuses to perform properly assigned duties in fact removes himself from a duty status to a non-duty status. In such a case, action taken to relieve the employee from duty is nothing more than administrative recognition of the employee's own actions and does not constitute a suspension from duty as contemplated in Public Law 623 (28 Comp. Gen. 593; B-84647 of 19 April 1949). (The Department interprets this decision to mean that an employee who refuses properly assigned duties may be placed in a non-duty status only for the remainder of the day on which the refusal occurs. When this is done, the employee should be instructed to report for duty on the following work day.)

6-8. OATH OF OFFICE AND AFFIDAVIT.--An employee reinstated or restored under the provisions of Public Law 623 is not required to file a new oath of office and affidavit of non-affiliation provided restoration is retroactively effective to the date of separation.

SECTION 7, SECTION 14 RIGHTS, VETERANS' PREFERENCE ACT

	Paragraph No.
Legal basis	7-1
Policy of the Department	7-2
Disciplinary action involving veterans	7-3
Excusing employees to attend Commission hearings	7-4
Appeals	7-5

7-1. LEGAL BASIS.

a. Statutory.--Section 14 of the Veterans' Preference Act of 1944 provides that no veteran as defined in NCPI 45.2 shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred from future appointment except for such cause as will promote the efficiency of the service. He shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed) stating any and all reasons, specifically and in detail, for any such proposed action. Further, he has the right to answer personally and in writing and to appeal such actions to the Civil Service Commission.

b. Civil Service Regulations.--C. S. Regs. 9, 21.10 and 22 constitute the basis governing advance notice to, and appeals by, veterans against whom adverse action is proposed, in both the competitive and excepted services. ★FPM pages S1-28 to 30 indicate the procedural requirements of Section 14 Part 22 of the Commission's regulations is based on Section 14.★

7-2. POLICY OF THE DEPARTMENT. --All activities will assure compliance with provisions of Section 14 of the Veterans' Preference Act of 1944. Further, they will permit representatives of the Civil Service Commission to inspect or review pertinent records. Heads of activities or their representative should be present at hearings held by the Civil Service Commission on appeals involving their employees who are veterans in order that the interests of all groups may be preserved.

7-3. DISCIPLINARY ACTION INVOLVING VETERANS.

a. Disciplinary action.--Disciplinary action taken against veterans shall be in accordance with the provisions of NCPI 45.5. For corrective action see NCPI 45.6.

b. Adverse actions pursuant to CSC directives.--The procedures required by NCPI 45.5 are not applicable in cases where the Commission directs adverse action against a veteran. ★See NCPI 45.8.★

c. Acceptance of reduction in rank or salary to avoid charges.--Cases in which veterans are advised to accept reduction in rank or salary in lieu of having charges preferred against them are

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subject to appeal and review by the Commission.

d. Requests for reductions in rank or salary.--The procedures of NCPI 45.5 are not applicable where a veteran ☆ makes a written request for ☆ a reduction in rank or salary solely for personal reasons and in his own interest provided the employee and not the activity initiates the request for reduction, the activity has exercised no pressure, the employee fully understands the transaction and considers the reduction to be for his benefit, and he has clearly indicated that he wishes the action to be taken. However, a full record should be kept by activities of any cases falling in this category in the event appeal to the Commission is made.

7-4.☆ EXCUSING EMPLOYEES TO ATTEND COMMISSION HEARINGS.

a. The provisions of NCPI 105.8 are applicable. Subject to these provisions the veteran, his representative and his witnesses should be excused without charge to leave to attend hearings held by the Commission whether such hearings are held on or off the premises of the local activity. When the Commission requests the presence of an employee at a hearing, the employee should be excused without charge to leave.☆

7-5. APPEALS.

a. Regional decisions.

(1)☆ When veteran preference employees appeal to the Civil Service Commission, naval activities shall comply with decisions of Regional Directors of the Commission or of the Chief, Appeals Examining Office of the Commission,☆ if such compliance does not involve relaxation of the effective and proper administration of the naval activities. Activities shall report to the appropriate office of the Commission within 7 days of receipt of the finding and recommendation, the action that will be taken.

(2) Where the naval activity finds it impracticable to comply with the finding and recommendation, the naval activity may appeal within 7 days of receipt of the finding and recommendation, to the ☆Commissioners, U. S. Civil Service Commission, Washington 25, D. C., attention, Board of Appeals and Review. The Board of Appeals and Review of the Commission will review the record and, in its discretion, may afford the parties an opportunity to appear personally.☆ The Office of Industrial Relations, OIR Code 105, is available in Washington to assist field activities in making such appeals. In event naval activities do not appeal decisions of the Commission, compliance is mandatory.

b. Commissioners' decisions.--Only in exceptional cases where it is believed that the action recommended by the Commissioners would be prejudicial to the good of the service shall naval activities not comply with the recommendation of the Commissioners. In such cases the complete file shall be forwarded to the Office of Industrial Relations, OIR Code 105, for determination as to whether the Navy Department will ask for reconsideration on the part of the Commissioners.

c. Reopening of cases - further appeals to the Commissioners.--The Commissioners may in their discretion, when in their judgment such action appears warranted by the circumstances, entertain a further appeal at the request of the appellant or his designated representative or of the employing agency.

☆d. Reference material.--FPM pages pages S1-31 and Z1-301 provide details concerning the processing of appeals, the conduct of hearings, etc.☆

SECTION 8, REMOVAL OR SEPARATION AT THE REQUEST OF THE CIVIL SERVICE COMMISSION

	Paragraph No.
Legal basis	8-1
Policy	8-2
Civil Service Commission procedure	8-3
Navy Department appeal procedure	8-4
Persons in military service	8-5

57 ;-

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8-1. LEGAL BASIS.--The Civil Service Commission is legally responsible for determining "the fitness of applicants for the public service" (Act of 16 January 1883, 22 Stat. 403; 5 USC 632 et seq.).

8-2. POLICY.--It is the policy of the Department that a separation order of the Civil Service Commission will be appealed only if the individual is extremely valuable to the activity and the head of the activity believes the retention of the employee is clearly in the interest of the government.

8-3. CIVIL SERVICE COMMISSION PROCEDURE.--When the Civil Service Commission uncovers evidence which in the opinion of the Commission warrants the suspension or separation of an employee, and the Commission has jurisdiction, the Commission will direct the employing agency or activity to suspend or separate such employee. An employee whose separation is ordered by the Commission may be given 30 days' notice of separation unless the notice instructing removal sets a different period.

8-4. NAVY DEPARTMENT APPEAL PROCEDURE.--Whenever an employing activity receives an order from the Civil Service Commission to suspend or separate an employee, the head of the activity concerned may appeal such order only if the employee's services have been satisfactory and if his separation would cause a material loss to the activity, or if the head of an activity has new and additional information concerning the employee which is likely to alter the Commission's order. In such appeals the following procedure will be followed:

a. Appeal to the Civil Service Commission.--The head of the activity, on the basis of his investigation of the situation, may appeal to the appropriate office of the Commission setting forth in detail and specifically the reasons for which the appeal is being made and providing the Commission with additional information which casts a reasonable doubt on the propriety of the order to suspend or separate the employee. During the time that the appeal is pending, the employee will be retained in an active duty status.★ If the order was issued by the central office of the Commission, the appeal should be directed to the Board of Appeals and Review, Civil Service Commission, Washington, D. C. If the order was issued by a Regional Director, the appeal should be directed first to the Regional Director and then to the Board of Appeals and Review.

b. Action upon denial of appeal.--If the appeal is denied by the Board of Appeals and Review, the activity must comply with the order or request the assistance of the Department in making a further appeal to the Commissioners, U. S. Civil Service Commission.★

c. Appeal to the Department.--In requesting assistance of the Department, the head of the activity will forward to OIR Code 215 the employment record of the individual and a complete statement of the merits and facts in the case. The Department, after reviewing the material submitted by the head of the activity, will appeal the order for separation or suspension to the★ Commissioners, if such action is considered justified, in which case the activity will be advised and may retain the employee in an active duty status pending further advice from the Department. If the Department concurs in the findings of the Board of Appeals and Review,★ the activity will comply with the order.

d. Personnel action forms.--If and when the employee is separated or suspended, the appropriate personnel action form will be executed showing reason for the separation or suspension. The date and file number of the Commission's request should be placed under "Civil Service or other legal authority."

8-5. PERSONS IN MILITARY SERVICE.--Whenever the Civil Service Commission directs the separation of an employee in the military service, the appointing officer will return the case to the Commission and advise the Commission of the fact of military service. When the employee returns from military service, the activity will advise the Commission of such fact. This procedure will be followed in all cases except those arising from political ac-

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tivity by Federal employees (NCPI 150.7).

SECTION 9, ARREST RECORDS FROM THE COMMISSION

	Paragraph No.
Consideration of arrest records	9-1
Report of action taken	9-2
Employees transferred to other naval activities	9-3
Employees separated or transferred to other Federal agencies	9-4

9-1. CONSIDERATION OF ARREST RECORDS.--CIR transmits Federal Bureau of Investigation reports of arrest records on employees to naval activities concerned for action considered necessary. Upon receipt of an arrest record, the head of the activity shall inquire into the circumstances involved. Where the disposition of charges is not indicated on the arrest record and the head of the activity desires to know the disposition, he shall check the items with the appropriate Civil Service Regional Office to determine the disposition of the charges. Local policy records shall be reviewed only if the Commission's Regional Office has not done so. After the arrest record has been evaluated, the head of the activity shall take such action as is considered warranted, and make a report of action taken as required by NCPI 45.9-2.

9-2. REPORT OF ACTION TAKEN.--The OIR arrest record transmittal letter will specify the office to which the report of action taken should be addressed. The head of the activity shall report action taken in one of the following ways, as specified:

a. In those cases in which employees are charged with sexual perversion, the head of the activity shall report by letter to OIR Code 111 the action taken. Where the head of the activity does not consider that removal or separation is justified, the report to OIR Code 111 shall explain the basis for the retention of the employee. OIR is required to report to the Commission any action taken by naval activities upon receipt of such arrest records, including the retention of employees and the reasons therefor.

b. In cases containing charges other than charges of sexual perversion, the head of the activity shall report, on the form provided, the action taken, direct to the Regional Office of the Commission or to the Civil Service Commission, as specified in the form provided. No report of action taken is required by OIR in such cases. Where the head of the activity does not consider that removal or separation is justified, the report to the specified office of the Commission shall explain the basis for the retention of the employee.

9-3. EMPLOYEES TRANSFERRED TO OTHER NAVAL ACTIVITIES.--In the event that the employee concerned has transferred to another naval activity prior to receipt of the arrest record, the head of the activity shall transmit all material forwarded by OIR direct to the gaining activity for compliance with this Instruction. A copy of the transmittal letter shall be furnished OIR Code 111.

9-4. EMPLOYEES SEPARATED OR TRANSFERRED TO OTHER FEDERAL AGENCIES.--In the event that the employee concerned has separated, or transferred to another Federal agency, prior to receipt of the arrest record, the head of the activity will report such fact, including the date and nature of separation or the agency and location to which transferred, as follows:

a. To OIR in cases involving sexual perversion.

b. To the Regional Office of the Commission in other cases.★

SECTION 10,★ CONDUCT OF EMPLOYEES; GENERAL PROBLEMS WHICH MAY REQUIRE DISCIPLINARY ACTION; AND MISCELLANEOUS PROHIBITIONS

	Paragraph No.
Conduct of employees	10-1
Outside employment	10-2
★ Loans	10-3

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Indebtedness of employees ..... 10-4★
Unauthorized disclosure of information 10-5
Charges for notarial acts 10-6
Loss of or damage to Government tools or equipment 10-7
Table of Miscellaneous Offenses Prohibited by Law or Civil Service Regulation 10-8

10-1. CONDUCT OF EMPLOYEES.

a. Speculation by employees.--In a letter dated 22 April 1937, the President requested the Civil Service Commission to take steps to inform all officials and employees of the Government that speculation on their part or in their behalf in corporate stocks or bonds or in commodities is contrary to Government policy. The President said:

"I believe it to be a sound policy of the Government that no officer or employee shall participate directly or indirectly in any transaction concerning the purchase or sale of corporate stocks or bonds or of commodities for speculative purposes, as distinguished from bona fide investment purposes. Engagement in such speculative activities by any officer or employee, whether under the competitive civil service or not, should be among the matters considered by the heads of departments and establishments and by the Commission in passing upon questions concerning his qualifications for retention or advancement."

(1) Policy.--It is the policy of the Department that engagement in such speculative activities be considered when activities pass upon qualifications of employees for retention or advancement in the service.

b. Conduct unbecoming Government inspectors.--There shall be no dealing whatever, of a private nature, between a naval inspector and a contractor or his representative, and any such transactions will be sufficient cause for discharge. Accordingly, inspectors must not borrow money from representatives of contractors doing work for the Government, nor conduct themselves in such manner that they may be suspected of collusion with such representatives, nor fail to protect the Government's interests at all times.

c. Standards of conduct for persons having business dealing with the representatives of industry.--All persons engaged in procurement and related activities must be mindful of their grave responsibility and position of trust in their business dealings with representatives of industry. Many practices which would be normal and proper in the private business world are not acceptable for Government employees who are spending the Government's money. It is essential that all such persons set for themselves the highest standards of personal conduct in their relations with business firms and individuals, thereby insuring that these relations are above reproach in every respect. The acceptance of entertainment or gifts (no matter how innocently tendered or received) from one who seeks or enjoys profitable business dealing with the Government may compromise and embarrass both the Navy and the official concerned. No person shall confer special benefits upon particular suppliers, such as by giving them information of proposed purchases, unless such information is also made available to all competing suppliers. The general policy throughout the Department of the Navy with respect to standards of conduct for personnel engaged in procurement and related activities is as follows:

★ (1) No Government officer or employee who has the direct responsibility for negotiating and signing contracts or approving the payment of money to contractors, should have any financial interest in any such contractor. No Government officer or employee should permit himself to be exposed to a dual-interest position or to a conflict between self-interest and integrity. He should clearly be in a position to act to the best of his ability without fear or favor in the best interest of his Government.

(2) Where an officer or employee of the Department of the Navy

57

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has any financial interest in any business entity, corporation, or partnership, transacting or contemplating transacting business with the Government that officer or employee is disqualified from having any dealings of any kind for or in behalf of the Department of the Navy with such business entity.

(3) Where an officer or employee of the Department of the Navy feels that he should be disqualified from taking action in a particular matter, it is his duty to so inform his superior or department head, and he will be relieved of his duty and responsibility in that particular case. The matter will then be assigned to someone else of equal or higher rank, who clearly has no conflict of interest for decision and action.

(4) Where any superior who thinks that an officer or employee reporting to him may be involved in a conflict of interest, or an apparent conflict of interest of importance from a public confidence point of view, he will discuss the matter with the person involved and may relieve such officer or employee of responsibility in the case. He will then assign the responsibility for taking action to someone else of equal or higher rank who clearly has no conflict of interest for decision and action, or he may take the responsibility for decision and action himself.☆

10-2. OUTSIDE EMPLOYMENT.

a. Policy.--The Department recognizes that some employees in the departmental and field services are also employed by private corporations, partnerships or individuals. It is not the desire of the Department to interfere with the opportunities of employees to increase their incomes through the acceptance of outside employment when opportunity offers, except where such employment interferes with the rendition of satisfactory service to the Navy, involves relations with firms bidding on or making contracts with the Government which may, by the nature of such relations, have a detrimental effect on the interests of the Government, or where applicable statutes and executive orders are not complied with. The Department, therefore, under authority of Revised Statute 161 (5 USC 22), specifically prohibits any of its employees from accepting or continuing in employment under the following conditions:

(1) Where private employment would interfere with the rendition of satisfactory service, such as employment which would affect physically the performance of Government duty. Example: Private employment which strains the mental or physical capacities of employees and results in a lowering of efficiency in their Navy employment.

(2) Where private employment would result in affecting adversely to the Government the opinions of the employee or the results of his duties, such as employment with a firm holding contracts with the Government or contemplating making or bidding on contracts with the Government where the employee may be in a position, through his employment with the Navy, to influence the holding or making of such contracts. Any employee who violates the provisions of this paragraph shall be directed to cease such employment and failing, shall be transferred or separated under appropriate procedures.

(3) Where the official positions of employees may otherwise be compromised by reason of outside employment. Such cases must be handled individually on their merits on the basis that no public officer or employee can lawfully engage in business activities which are incompatible with his official duties, which may result in conflicting personal interest, or which may result in neglect of official duties through attention to private affairs.

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Charges predicated on condition (1) above should always bear upon the employee's performance in his job with the Navy and should not be based on refusal to sever private employment. Charges based on conditions (2) and (3) above should specifically indicate the areas in which continuance of the private employment is incompatible with the interests of the Government. As a general rule, removal action should not be taken until after the employee has first been warned and has failed to comply with the terms of the warning.

b. Teaching and instruction.--Federal employees may hold positions as teachers or instructors in state, territorial, or municipal schools and universities if the holding of such positions does not in any manner interfere with the performance of the duties of the position under the Federal Government as provided in Executive Order 8390 of 11 April 1940. See NCPI 45.1-1a. In holding such positions as teachers and instructors, however, no course or class may be conducted and no instruction may be given with a view toward the special preparation of any person for civil-service examinations in violation of Executive Order 9367 of 4 August 1943. Teaching by Federal officers and employees in schools and universities has been held to be prohibited by this executive order under the following circumstances:

(1) If the particular school or university holds itself out as offering courses specially designed to prepare students for civil service examinations.

(2) If the course itself is specially designed to train applicants for civil service examinations or is so closely related with the subject matter of a civil service examination that it has the effect of specially preparing persons for such examinations.

Heads of activities, before granting employees permission to teach, should determine that the proposed teaching is not in violation of Executive Order 9367. An appropriate notation that such determination was made should be placed in the personnel folders of employees concerned. ★ Although prior approval of the Civil Service Commission as to the appropriateness of any teaching activity with respect to Executive Order 9367 is not required, questions as to whether a specific teaching activity is prohibited may be presented to the Commission for an advisory opinion. ★

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10-3. LOANS.

a. Loans.--No civilian employee carried on the rolls in a supervisory rating shall request or accept any loan of money from an employee under his supervision; nor shall any employee lend money to any civilian employee under whose supervision he may be working. Employees violating this policy will be subject to appropriate disciplinary action.

★10-4. INDEBTEDNESS OF EMPLOYEES.

a. The Department of the Navy expects its employees to pay their just debts and maintain a reputation in the community for honoring their obligations. Failure of an employee to honor his just debts without good cause may reflect on his suitability for continued naval employment to such extent that disciplinary action, including removal from the service, may be necessary. In determining whether disciplinary action is required, all the facts and circumstances of the case, including the individual's employment history, shall be taken into consideration. Disciplinary action may be taken whenever the indebtedness reflects so unfavorably on the employee's suitability for Federal service as to make disciplining him necessary. Disciplinary action may not be taken merely on the grounds that the employee has incurred indebtedness.

b. The Department's views and procedures regarding the various types of indebtedness follow:

(1) U. S. Income Tax Indebtedness. - It is the policy of the Department that employees must liquidate their delinquent Federal income tax obligations or else show cause why they should not be removed from naval employment. Commanding officers, when notified

379

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by the proper Treasury Department officials, will notify employees of such information and will instruct such employees that they are expected and required to meet or communicate with officials of the Treasury Department and reach mutually satisfactory agreements to liquidate the delinquent taxes. Notices of the agreements should be forwarded to commanding officers by employees concerned. Once an agreement has been reached between an employee and the Treasury Department, failure on the agreement will be sufficient cause to initiate removal action under NCPI 45.5. Commanding officers should satisfy themselves in each case that the employee has, in fact, refused to make reasonable effort to satisfy the delinquent tax obligation, taking into account any unusual circumstances that may have taken place subsequent to the date of the agreement between the employee concerned and the Treasury Department, before removal action is taken.

(2) Other indebtedness to the United States and indebtedness to state and local agencies of government.--Activities shall assist Federal, state and local agencies of government by calling the employee's attention to his indebtedness and apprising him of the Department's attitude as stated above. Reasonable effort should be made to prompt the employee to make satisfactory arrangements with the agency involved to liquidate his indebtedness. When appropriate, fiscal action may be considered in accordance with the provisions of paragraph 033016, Navy Comptroller Manual.

(3) Private debts to individuals and companies.--The Department considers that it is the responsibility of creditors to investigate employees to whom they extend credit and to assume responsibility for collection. Although the Department desires that private debts be resolved as expeditiously as possible, and will assist creditors to the extent of calling the employees attention to his indebtedness and the Department's attitude thereto, it cannot consider itself as a collection agent or become an arbiter when the validity of a debt is questioned.

(4) Letters similar to the form letters provided in NCPI 45.11-Encl. 4, may be used for replying to inquiries regarding any of the categories of indebtedness noted above except U. S. Income Tax indebtedness. Such form letters shall not be used for replying to Congressmen, heads of state and local governments over their personal signatures, or when protocol or good business practice would otherwise preclude their use. The use of such form letters is not mandatory and other methods for handling inquiries concerning indebtedness may be developed in the discretion of management.★

10-5. UNAUTHORIZED DISCLOSURE OF INFORMATION.--Article 1252 of U. S. Navy Regulations states in part:

"No person in the Naval Establishment shall convey or disclose by oral or written communication, publication, or other means, except as may be required by his official duties, any information whatever concerning the Naval or other Military Establishment or forces, or any person, thing, plan, or measure pertaining thereto, when such information might be of possible assistance to a foreign power; or, except by proper naval authority, any information contained in the official records of the Government or otherwise acquired which, for reasons of public policy, should not be disclosed to persons not of the Naval or other Military Establishments. . . ."

10-6. CHARGES FOR NOTARIAL ACTS.--Article 1268 of U. S. Navy Regulations states:

55C

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"No officer, clerk, or employee in the executive service of the Government, who is also a notary public, shall charge or receive any compensation whatever for performing any notarial act for any person in the naval service, clerk, or employee of the Government in his official capacity, or in any matter in which the Government is interested, or for any person when, in the case of such person, the act is performed during the hours of such notary's service to the Government. This regulation shall not apply to oaths of disinterestedness, or other oaths required to be made by law, provided that the work in connection therewith is not performed during office hours."

10-7. LOSS OF OR DAMAGE TO GOVERNMENT TOOLS OR EQUIPMENT.

☆a. Policy.--It is the policy of the Department to handle cases involving loss of or damage to Government-owned tools and equipment, whether such loss or damage is the result of negligence, carelessness or maliciousness, in such manner as will assure minimum losses to the Government, yet at the same time, assure good employee relations.

b. Authority.--There exists no legal authority by which the Secretary of the Navy or any subordinate official may require civilian employees to compensate the Government for loss of or damage to Government property. This is true whether or not fault exists on the part of the employee. However, activities may take appropriate action, as set forth hereinafter, including, in certain circumstances, the withholding or applying of an employee's final salary payment for indebtedness to the Government.

c. Action.--When loss of or damage to Government-owned tools and equipment occurs, activities may utilize any of the following applicable procedures:

(1) Take disciplinary action under NCPI 45.11-Encl. 1, item 12 or 24, as appropriate.

(2) Initiate criminal or civil action. This procedure is particularly applicable when clear evidence of negligence, carelessness or maliciousness establishes fault on the part of the employee. Criminal or civil action will be taken via the management bureau, the Judge Advocate General of the Navy and the Department of Justice.

(3) Withhold or apply the employee's final salary payment.

(a) When the employee is being separated other than for cause and where the loss of or damage to Government property clearly results from fault of the employee, final salary payment should be withheld from the employee and sent, along with the Government's claim against the employee, to the General Accounting Office for disposition. When the employee is being separated for cause and where the loss of or damage to Government property clearly results from fault of the employee, moneys due him for pay may be applied against any indebtedness therefor and the General Accounting Office notified of such action. In cases involving separations for cause, claims in excess of the amount withheld from the employee may be referred to the General Accounting Office for further action. In either case, whether the final salary payment has been withheld or applied against an employee's indebtedness, the employing activity will inform the General Accounting Office of the conditions of such loss or damage, including:

1. a statement that the charges certified have not previously been certified,
2. that the charges accrued by the employee's fault,
3. that the employee has had reasonable oppor-

581

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tunity to be heard with respect to the charges and has not as a result of such opportunity been relieved of responsibility.

(b) Where the Navy has either withheld or applied money under (3) (a) above, the employee may present a claim to the General Accounting Office for the money due him, and when this occurs the Department of the Navy must be prepared to justify its action.

(4) Accept voluntary reimbursement.--When an employee voluntarily consents to pay for lost or damaged tools under his care, such money may be accepted. However, the threat of initiating action consistent with (1), (2), or (3) above may not be used to secure such "voluntary" payment.★

10.8. TABLE OF MISCELLANEOUS OFFENSE PROHIBITED BY LAW OR CIVIL SERVICE REGULATION.--NCPI 45.11-Encl. 5 is a table of offenses specifying other prohibitions not listed elsewhere in this Instruction. It lists offenses for which employees may be punished by removal, fine or imprisonment. These prohibitions and penalties are based on Civil Service Rules or Regulations or on law, and in some cases naval activities have no jurisdiction over the determination as to whether or not an employee is guilty. In such cases appropriate action should be taken in cooperation with the Civil Service Commission or other proper authority.
★ It is not necessary to post this Table on bulletin boards and it has not been printed centrally for distribution.★

SECTION 11, ENCLOSURES

11-1. Standard Schedule of Disciplinary Offenses and Penalties.

★ 11-2. Delegation of authority to effect disciplinary suspensions, demotions and removals.

11-3. Diagram, illustrating the use of reckoning periods in penalty actions.

11-4. Employees Indebtedness Notice NAVEXOS 3893.

11-5. Table of Miscellaneous Offenses Prohibited by Law or Civil Service Regulations.★

File No. - OIR 210

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27
23 September 1954
C. S. 529

STANDARD SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR CIVILIAN EMPLOYEES IN THE NAVAL ESTABLISHMENT

A. INSTRUCTIONS FOR USE OF SCHEDULE

1. THIS LIST IS NOT INTENDED TO COVER EVERY POSSIBLE TYPE OF OFFENSE. PENALTIES FOR OFFENSES NOT LISTED WILL BE PRESCRIBED BY THE HEAD OF THE ACTIVITY CONSISTENT WITH PENALTIES FOR OFFENSES OF COMPARABLE GRAVITY.

2. PENALTIES FOR DISCIPLINARY OFFENSES WILL, IN GENERAL, FALL WITHIN THE RANGES INDICATED. IN UNUSUAL CIRCUMSTANCES, DEPENDING ON THE GRAVITY OF THE OFFENSE AND THE PAST RECORD OF THE EMPLOYEE, A PENALTY EITHER MORE LESS SEVERE THAN THE MAX OR MIN RANGE, PROVIDED FOR HEREIN, MAY BE IMPOSED BY THE HEAD OF THE ACTIVITY.

3. DEPENDING ON THE SEVERITY OF THE OFFENSE, REMOVAL PROCEEDINGS MAY BE INSTITUTED AGAINST AN EMPLOYEE FOR ANY FOUR OFFENSES COMMITTED IN ANY 24 MONTHS' PERIOD WHICH INCLUDE TWO OR MORE OFFENSES OF THIS SCHEDULE, OR FOR THE FOURTH OCCURRENCE OF THE SAME OFFENSE WITHIN THE RECKONING PERIOD FOR THAT OFFENSE.

4. RECKONING PERIODS ARE NOT CUMULATIVE.

5. WHERE APPROPRIATE, CONSIDERATION MAY BE GIVEN TO DEMOTION IN LIEU OF REMOVAL.

6. THE SUSPENSION PENALTIES LISTED HEREIN ARE APPLICABLE TO WORK DAYS ONLY. (Caution: Section 14, Veterans' Preference Act of 1944 - "Suspended for more than 30 days" is interpreted to express calendar days)

RANGE OF PENALTIES FOR STATED OFFENSES

(Warnings - Suspensions - Removals)

	Number of occurrence in reckoning period							
	1st		*2nd*		*3rd*		*Reckoning*	
NATURE OF OFFENSE	*MIN*	*MAX*	*MIN*	*MAX*	*MIN*	*MAX*	*Period*	*Remarks*
1. UNEXCUSED FAILURE TO RING CLOCK OR SIGN ATTENDANCE RECORD OR OTHERWISE CHECK IN	*Warning*	*1 day*	*1 day*	*5 days*	*5 days*	*15 days*	*6 months*	

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Nature of Offense	Number of occurrences in reckoning period 1st MIN	1st MAX	2nd MIN	2nd MAX	3rd MIN	3rd MAX	Reckoning Period	Remarks
2. UNEXCUSED TARDINESS	Warning	1 day	1 day	5 days	5 days	15 days	6 months	Suspensions are in addition to non-pay status for period of tardiness
3. FAILURE TO CARRY OR SHOW PROPER IDENTIFICATION ON NAVY PREMISES AS REQUIRED BY COMPETENT AUTHORITY, OR MISPLACEMENT OR LOSS OF IDENTIFICATION BADGE	Warning	1 day	1 day	5 days	5 days	15 days	6 months	
4. FAILURE TO REPORT PERSONAL INJURY OR ACCIDENT	Warning	1 day	1 day	5 days	5 days	15 days	1 year	

5844

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Nature of Offense	Number of occurrences in reckoning period						Remarks	Reckoning Period
	1st		2nd		3rd			
	NIH	NAI	NIH	NAI	NIH	NAI		
5. UNEXCUSED OR UNAUTHORIZED ABSENCE ON 1 OR MORE SCHEDULED DAYS OF WORK	Warning	5 days	3 days	10 days	10 days	Removal	Charge may also be used for failure to report for scheduled overtime. The charge of EXCESSIVE UNAUTHORIZED ABSENCE with the penalty of removal may be used when the absence is prolonged to exceed five work days or when it appears the employee has abandoned his position. Extenuating circumstances offered by the employee should be considered.	1 year
6. LEAVING JOB TO WHICH ASSIGNED OR NAVY PREMISES AT ANY TIME DURING WORKING HOURS WITHOUT PROPER PERMISSION	Warning	5 days	3 days	10 days	10 days	Removal		1 year

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NATURE OF OFFENSE	Number of occurrences in reckoning period 1st MIN	1st MAX	2nd MIN	2nd MAX	3rd MIN	3rd MAX	Reckoning Period	Remarks
7. FAILURE TO OBSERVE PRECAUTIONS FOR PERSONAL SAFETY, POSTED RULES, SIGNS, WRITTEN OR VERBAL SAFETY INSTRUCTIONS OR TO USE PROTECTIVE CLOTHING OR EQUIPMENT	Warning	5 days	3 days	10 days	10 days	Removal	1 year	
8. VIOLATING TRAFFIC REGULATIONS, RECKLESS DRIVING ON NAVY PREMISES, OR IMPROPER OPERATION OF MOTOR VEHICLE	Warning	5 days	3 days	10 days	10 days	Removal	1 year	Driver's permit to operate vehicle on premises may be suspended or revoked, in lieu of other penalty, if vehicle involved is privately owned and recklessness or hazard to others is not involved in offense
9. LOAFING, WILLFUL IDLENESS OR WASTING OF TIME	Warning	5 days	3 days	10 days	10 days	Removal	1 year	

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Nature of Offense	Number of occurrences in reckoning period before: 1st		2nd		3rd		Reckoning Period	Remarks
	MIN	MAX	MIN	MAX	MIN	MAX		
10. CARELESS OR NEGLIGENT WORKMANSHIP RESULTING IN SPOILAGE OR WASTE OF MATERIALS, OR DELAY IN PRODUCTION	Warning	5 days	3 days	10 days	10 days	Removal	1 year	
11. FAILURE OR DELAY IN CARRYING OUR ORDERS, WORK ASSIGNMENTS OR INSTRUCTIONS OF SUPERIORS	Warning	5 days	3 days	10 days	10 days	Removal	1 year	
12. LOSS OF OR DAMAGE TO GOVERNMENT PROPERTY, TOOLS AND EQUIPMENT OR THE PROPERTY OF OTHERS, OR ENDANGERING SAME, THROUGH CARELESSNESS	Warning	10 days	10 days	Removal	15 days	Removal	1 year	Does not apply to damage to government-owned household furnishings or quarters resulting from normal tenancy therein.

587

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Nature of Offense	Number of occurrences in reckoning period 1st		2nd		3rd		Reckoning Period	Remarks
	NIK	NAK	NIK	NAK	NIK	NAK		
13. GAMBLING, UNLAWFUL BETTING ON NAVY PREMISES	Warning	10 days	10 days	Removal	15 days	Removal	2 years	
14. FIGHTING, THREATENING, ATTEMPTING OR INFLICTING BODILY INJURY TO ANOTHER; ENGAGING IN DANGEROUS HORSEPLAY OR RESISTING COMPETENT AUTHORITY; DISORDERLY CONDUCT	Warning	10 days	10 days	Removal	15 days	Removal	2 years	
15. COVERING UP OR ATTEMPTING TO CONCEAL DEFECTIVE WORK; REMOVING OR DESTROYING SAME WITHOUT PERMISSION	Warning	10 days	10 days	Removal	15 days	Removal	2 years	

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Nature of Offense	Number of occurrences in reckoning period 1st		2nd		3rd		Reckoning Period	Remarks
	MIN	MAX	MIN	MAX	MIN	MAX		
16. REPORTING FOR DUTY OR BEING ON DUTY UNDER THE INFLUENCE OF INTOXICANTS; UNAUTHORIZED POSSESSION OF, OR ATTEMPTING TO BRING, INTOXICANTS ON NAVY PREMISES	Warning	10 days	10 days	Removal	15 days	Removal	2 years	Consider the nature of an employee's position or assignment.
17. SELLING INTOXICANTS ON NAVY PREMISES	Warning	Removal	10 days	Removal	Removal	Removal	2 years	
18. PROMOTION OF GAMBLING ON NAVY PREMISES	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
19. SLEEPING DURING WORKING HOURS	Warning	Removal	15 days	Removal	Removal	Removal	1 year	Consider the nature of an employee's position or assignment.

589

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Nature of Offense	Number of occurrences in reckoning period 1st	2nd	3rd	Reckoning Period	Remarks
20. FAILURE TO SAFEGUARD CLASSIFIED MATTER	Warning	Removal	15 days	Removal	Removal	2 years	Consider the nature of the employee's position or assignment, whether disclosure resulted, and the classification of the jeopardized matter. See U. S. Navy Security Manual for definition of classified matter and security manual of the appropriate agency when non-Navy matter is jeopardized.
21. SMOKING IN UNAUTHORIZED PLACES OR THE CARRYING OF MATCHES IN EXPLOSIVE AREAS	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
22. ENDANGERING THE SAFETY OF OR CAUSING INJURY TO PERSONNEL THROUGH CARELESSNESS OR NEGLIGENCE	Warning	Removal	15 days	Removal	Removal	Removal	2 years	

590

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NATURE OF OFFENSE	Number of occurrences in reckoning period: 1st MIN	1st MAX	2nd MIN	2nd MAX	3rd MIN	3rd MAX	Reckoning Period	Remarks
23. MAKING FALSE OR UNFOUNDED STATEMENTS, WHICH ARE SLANDEROUS OR DEFAMATORY, ABOUT OTHER EMPLOYEES, SUPERVISORS OR OFFICALS. ✱	Warning	Removal	15 days	Removal	Removal	Removal	2 years	✱ Consider the duties and position of the employee, the nature of the statements made and the extent to which they damage the activity or the injured party, the nature and timing of any retraction by the employee, and the extent to which the damaging statements are supported by established facts. ✱
24. MALICIOUS DAMAGE TO GOVERNMENT PROPERTY, TOOLS OR EQUIPMENT OR THE PROPERTY OF OTHERS	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
25. ACTUAL OR ATTEMPTED THEFT OF GOVERNMENT PROPERTY, TOOLS, OR EQUIPMENT, OR THE PROPERTY OF OTHERS	Warning	Removal	15 days	Removal	Removal	Removal	2 years	Whether or not restitution was made should enter into the determination of the penalty for this offense.

23 September 1954
C. S. 529

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NATURE OF OFFENSE	Number of occurrences in reckoning period 1st MIN	1st MAX	2nd MIN	2nd MAX	3rd MIN	3rd MAX	Reckoning Period	Remarks
26. IMMORAL, INDECENT OR NOTORIOUSLY DISGRACEFUL CONDUCT	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
27. DISRESPECTFUL CONDUCT, USE OF INSULTING, ABUSIVE OR OBSCENE LANGUAGE TO OR ABOUT OTHER PERSONNEL	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
28. FALSIFICATION, INTENTIONAL MISSTATEMENT, EXAGGERATION OR CONCEALMENT OF MATERIAL FACT IN CONNECTION WITH EMPLOYMENT, PROMOTION, ANY RECORD, INVESTIGATION OR OTHER PROPER PROCEEDING	Warning	Removal	15 days	Removal	Removal	Removal	2 years	

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NATURE OF OFFENSE	Number of occurrences in reckoning period 1st MIN	1st MAX	2nd MIN	2nd MAX	3rd MIN	3rd MAX	Reckoning Period	Remarks
29. FALSIFYING ATTENDANCE RECORD FOR ONESELF OR ANOTHER EMPLOYEE	Warning	Removal	15 days	Removal	Removal	Removal	2 years	
30. DISOBEDIENCE TO CONSTITUTED AUTHORITIES, OR DELIBERATE REFUSAL TO CARRY OUT ANY PROPER ORDER FROM IMMEDIATE SUPERVISOR OR OTHER SUPERVISOR HAVING RESPONSIBILITY FOR THE WORK OF THE EMPLOYEE; INSUBORDINATION	Warning	Removal	15 days	Removal	Removal	Removal	2 years	

★ NOTE: INFORMATION CONCERNING OTHER OFFENSES FOR WHICH EMPLOYEES MAY BE PUNISHED BY REMOVAL, FINE OR IMPRISONMENT MAY BE FOUND IN OTHER SECTIONS OF NCPI 45 AND IN OTHER NAVY ADMINISTRATIVE REGULATIONS. SUCH PROHIBITIONS AND PENALTIES ARE BASED ON CIVIL SERVICE RULES OR REGULATIONS OR ON LAW. IN CASE OF INFRACTION, APPROPRIATE ACTION WILL BE TAKEN IN COOPERATION WITH THE PROPER AUTHORITY. ★

593

23 September 1954
C. S. 529

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DELEGATION OF AUTHORITY TO EFFECT DISCIPLINARY SUSPENSIONS, DEMOTIONS, AND REMOVALS

Employees	Officials Authorized to Effect Actions		
	Removal	Demotion	Suspension
Groups I, II, III and Group IVb below GS-9	Activity Head	Activity Head or Head of major organizational segment (normally Department Head)	Head of Activity or Head of major Organizational Segment (normally Department Head), or Head of Principal Subdivision of Major Organizational Segment (normally Shop Master or Division Head).
Departmental Employees below GS-9 (or equivalent) and wage board employees in groups I, II, and III	Chief of Bureau, Office, or Headquarters	Chief of Bureau, Office, or Headquarters, or Head of Major Division	As delegated by Chief of Bureau, Office, or Headquarters
Group IVa, and Group IVb at or above GS-9	Activity Head	Activity Head	Head of Activity or Head of major Organizational Segment (normally Department Head).
Departmental Employees at GS-9 and above (or equivalent) and Group IVa wage board employees	Chief of Bureau, Office, or Headquarters	Chief of Bureau, Office, or Headquarters	As delegated by Chief of Bureau, Office, or Headquarters

NOTE: (1) Heads of activities and Chiefs of Bureaus, Offices and Headquarters in the Departmental Service, will determine at which of the above delegated levels, authority will be exercised.

(2) Industrial Relations Officers and Personnel Officers shall not sign any personnel action forms involving discipline except for employees under their own supervision.

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USE OF RECKONING PERIODS IN PENALTY ACTIONS

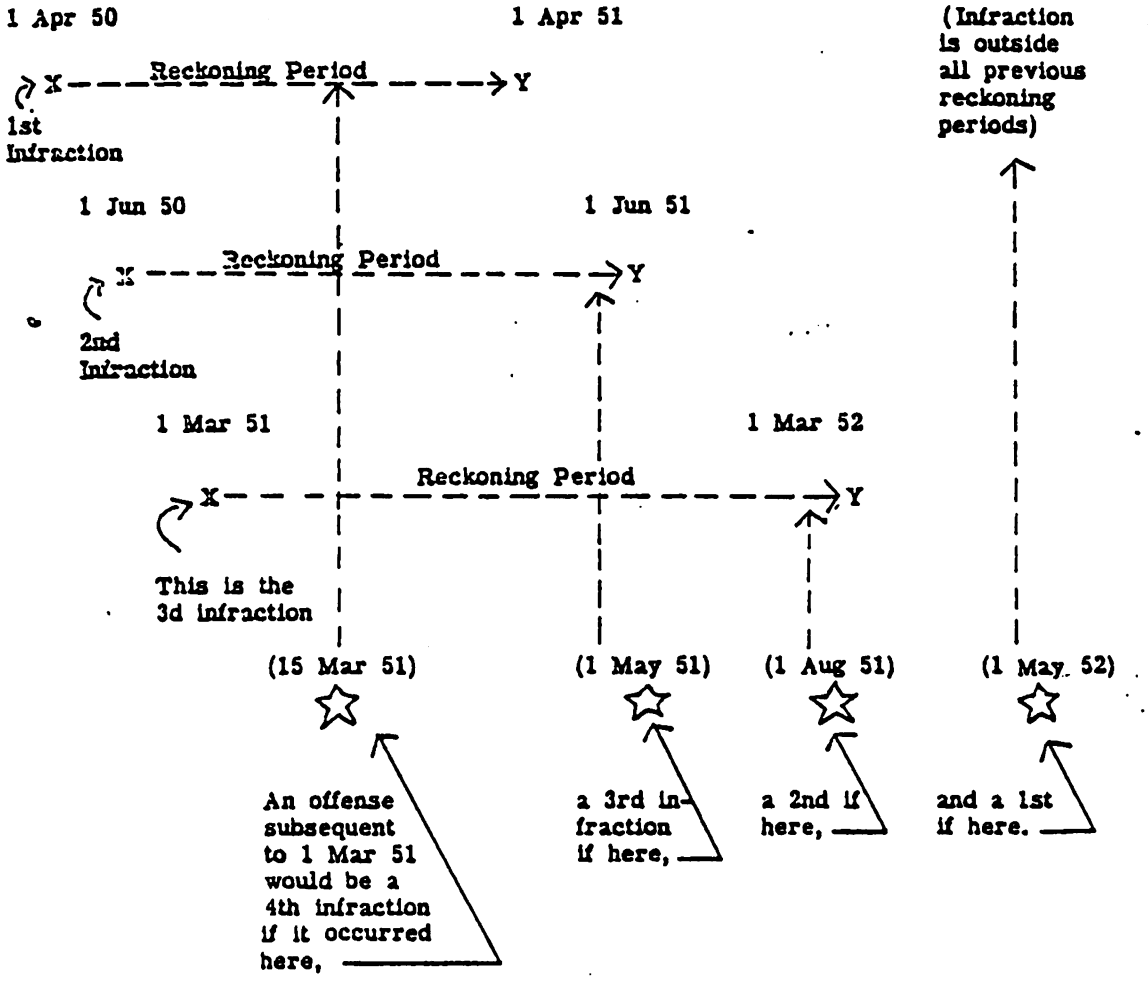

DIAGRAM: EFFECT OF RECKONING PERIOD ON REPETITIONS OF THE SAME OFFENSE. Employee commits the same offense on 1 April 1950, on 1 June 1950, and on 1 Mar 1951, and is formally disciplined each time. The reckoning period is one year. The sign X represents time of the offense; the sign Y represents the expiration date for the reckoning period. The sign ☆ represents a subsequent infraction which would be the fourth infraction in sequence but would be treated as the 4th, 3rd, 2nd or 1st infraction depending upon when it occurred. A vertical line erected over any infraction shown in the diagram will cut the horizonal reckoning period lines of all offenses which must be considered as previous infractions in determining the penalty. If no horizontal lines are cut, the offense is a first infraction case.

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EMPLOYEES INDEBTEDNESS NOTICE
NAVEXOS-3003 DEPARTMENT OF THE NAVY

NAME | ACTIVITY | DATE

☐ IS NO LONGER IN OUR EMPLOY ☐ HAS BEEN PAID IN OUR EMPLOY ☐ HAS ALSO NOTIFIED BY COPY OF THIS FORM OF YOUR COMMUNICATION REGARDING HIS INDEBTEDNESS OF $

The attention of both parties is invited to the statements of policy below.

SIGNATURE | TITLE

(Fold on this line)

STATEMENTS OF POLICY

1. Creditor:

The Department of the Navy considers that it is the responsibility of creditors to investigate employees to whom they extend credit and to assume responsibility for collection. Although the Department desires that private debts be resolved as expeditiously as possible, and will assist creditors to the extent of calling the employee's attention to his indebtedness and the Department's attitude thereto, it cannot consider itself as a collection agent or become an arbiter when the validity of a debt is questioned.

The Department expects its employees to pay their just debts and maintain a reputation in the community for honoring their obligations. Failure without good cause to honor just debts may reflect on an employee's suitability for continued employment with the Navy and may lead to disciplinary action, including removal.

2. Employee:

It is emphasized that failure to honor your just debts will reflect adversely on your suitability for continued employment. Each communication received from your creditor(s) will become a matter of record and may serve as part of the total record considered when personnel actions of vital importance are taken. Failure on your part to assume a responsible attitude toward your obligations will be considered sufficient reason to institute disciplinary action to suspend or separate you from employment. It is therefore unquestionably to your interest to make immediate arrangements to settle this matter satisfactorily.

If this form is used, three (3) copies should be prepared when replying to creditors regarding employee's indebtedness -

Original - to the creditor, in a 8 7/8" x 3 7/8" window envelope
2nd copy - to the employee in a regular envelope
3rd copy - employee's personnel folder

(NOTE: The use of this form is not mandatory; however, copies may be secured from District Publications and Printing Offices for those activities that may want to use it. Other forms or other methods of handling inquiries may be developed to fit specific local needs.)

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TABLE OF MISCELLANEOUS OFFENSES PROHIBITED BY LAW OR CIVIL SERVICE REGULATIONS

NOTE: A number of offenses listed under various titles of the U. S. Code, particularly Title 18, "Crimes and Criminal Procedure" require removal of the offender from the Federal Service in addition to any penalty imposed by the courts. This table presents only a partial list of such offenses. The offenses included are listed in outline form for convenience and reference. The actual text of the law or rule should be consulted before disciplinary action is initiated on the basis of the offense.

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Accepting voluntary service.--Accepting voluntary service for the Government except in cases of sudden emergency involving the loss of human life or the destruction of property.	Sec. 3679, Revised Statutes, as amended; 31 U.S.C. 665.	Removal (mandatory); $100 fine or one month imprisonment.
Employing unauthorized personnel.--Employing personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.	Sec. 3679 Revised Statutes, as amended; 31 U.S.C. 665.	Removal (mandatory); $100 fine or one month imprisonment.
Employing employee at seat of Government, except as provided otherwise.	5 U.S.C. 45, 47.	Removal (mandatory); $1,000 fine or one year imprisonment.
Paying for services from appropriations not containing authorization therefor.--Paying any employee at the seat of Government from any appropriation made for contingent expenses, or for any specific or general purpose, unless authorized and payment therefor specifically provided.	5 U.S.C. 46, 47.	Removal (mandatory); $1,000 fine or one year imprisonment.
Fraud in examination or appointment.--Intentionally making a false statement or practicing any deception or fraud in examination or appointment.	Civil service regulations 2.104 and 9.101.	Removal.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Inducing withdrawals.--Influencing another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.	Section 4.2 of Civil Service Rule IV.	Such disciplinary action as Civil Service Commission may direct.
Obstructing right of examination.--Willfully and corruptly, alone or in cooperation with others, defeating, deceiving, or obstructing any person in respect of his right of examination according to the civil service rules and regulations.	Sec. 5, Civil Service Act; 5 U. S.C. 637.	$1,000 fine; one year imprisonment; or both.
Improper activity with respect to examination ratings.--Willfully, corruptly, and falsely marking, grading, estimating, or reporting upon the examination or proper standing of any person examined under the Civil Service Act, or aiding in so doing. Willfully and corruptly making any false representations concerning the examination or proper standing of any person examined under the Civil Service Act, or concerning the person examined.	Sec. 5, Civil Service Act; 5 U. S.C. 637.	$1,000 fine; one year imprisonment; or both.
Improperly furnishing information relating to examinations.--Willfully and corruptly furnishing to any person any special or secret information for the purpose of either improving or injuring the prospects or chances for appointment, employment, or promotion, of any person examined or to be examined under the Civil Service Act.	Sec. 5, Civil Service Act; 5 U. S.C. 637.	$1,000 fine; one year imprisonment; or both.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Misconduct generally.--Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.	Civil Service Regulation 2.104.	Removal.
Influencing Members of Congress.--Using directly or indirectly, funds appropriated by Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress.[1]	18 U.S.C. 1913	Removal (mandatory) after notice and hearing; $500 fine, one year imprisonment, or both.
Influencing parties or witnesses or obstructing proceedings.--Endeavoring corruptly, or by threats or force, or by any threatening letter or communication, to influence, intimidate or impede any witness in any proceeding pending before any department, or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress of the United States.	18 U.S.C. 1505.	$5,000 fine; five years imprisonment, or both.

[1] This restriction does not operate to prevent officers and employees of the United States from communicating to Members of Congress on the request of any Member or to Congress through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Influencing parties--continued. Endeavoring corruptly, or by threats or force, or by any threatening letter or communication, to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department, or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being nad by either House, or any committee of either House or any joint committee of the Congress of the United States. Injuring any party or witness in person or property on account of attending such proceeding, inquiry or investigation, or of testifying to any matter pending therein.		
Refusing to testify before Civil Service Commission.--Refusing to give the Civil Service Commission or its authorized representatives all information and testimony in regard to matters inquired of arising under the Civil Service Act, rules and regulations, or to subscribe such testimony and make oatn or affirmation thereto before an officer authorized by law to administer oatns.	Sec. 5.3 of Civil Service Rule V.	Removal.
Impersonating Federal officer or employee.--Falsely assuming or pretending to be officer or employee acting under the authority of the United States, or in such pretended character demands or obtains any money, paper, document, or thing of value.	18 U.S.C. 912.	$1,000 fine; 3 years imprisonment; or both.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSES	LAW	MAXIMUM PENALTY
Habitual drunkenness.--Habitually using intoxicants to excess.	Sec. 8, Civil Service Act; 5 U.S.C. 640.	Removal (mandatory).
Receiving salary from source other than the United States Government.--Receiving any salary in connection with services as a Government official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (There are some statutory exemptions from this prohibition in the case of certain employees of specific departments.)	18 U.S.C. 1914 (Formerly 5 U.S.C. 66)	$1,000 fine; 6 months imprisonment; or both.
Gifts to official superiors.--Soliciting contributions from other Government officers or employees for a gift or present to those in a superior official position. Accepting gifts or presents offered or presented as a contribution from persons in Government employ receiving a lower salary. Making donation as a gift or present to official superior.	Sec. 1784, Revised Statutes; 5 U.S.C. 113.	Removal (mandatory) after notice in writing.
Bribes.--Asking, accepting, or receiving bribe of any kind with the intent of having one's decisions on any official matter influenced thereby.	18 U.S.C. 202	Fine of 3 times the value the bribe; 3 years imprisonment; or both; removal; perpetual disqualification from any Federal office of honor, trust, or profit.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Bribes.--Continued		If the offense was committed by a person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, and was committed in connection therewith, $2,000 fine; 2 years imprisonment; or both.
Extortion.--Under color of office, or pretended office, attempting any act which if performed would be extortion, or act of extortion.	18 U.S.C. 872.	$5,000 fine; 3 years imprisonment; or both (If the amount extorted or demanded does not exceed $100, $500 fine; one year imprisonment; or both.)
Requiring receipts for larger sums than paid.--The following acts when performed by persons charged with payment of any appropriation made by Congress: Paying to any clerk or other employee of the United States a sum less than provided by law, and requiring such employee to give voucher for a greater amount than paid.	18 U.S.C. 652.	Fine of double amount withheld; 2 years imprisonment; or both. (If the amount embezzled is $100 or less, $500 fine; one year imprisonment; or both.)
Using public money unlawfully.--Following acts when performed by any disbursing officer or person acting as such: Converting to own use, or loaning or depositing in any manner except as authorized by law, any public money entrusted to him; withdrawing such money	18 U.S.C. 653.	Fine of amount embezzled; 10 years imprisonment; or both. (If the sum embezzled is $100 or less, $1,000 fine; one year imprisonment; or both.)

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Using public money.--Continued from the Treasury or any authorized depositary for any purpose not prescribed by law. The following acts when performed by person charged with safe-keeping of public moneys: Loaning, using, converting, or depositing public moneys entrusted to him, except as specially allowed by law.	18 U.S.C. 648.	Fine equal to amount embezzled; 10 years imprisonment or both. (If the amount embezzled does not exceed $100, fine of $1,000; one year imprisonment; or both.)
Fraud as to Government transportation requests.--Falsely making, or assisting in making counterfeiting, forging, in whole or in part, any form of transportation request. Knowingly altering or assisting in altering any such request. Knowingly passing, publishing, selling, or attempting to pass publish, or sell any such false, forged, counterfeited, or altered form of request.	18 U.S.C. 508.	$5,000 fine; 10 years imprisonment or both.
Misuse of Government vehicles.--Using, or authorizing the use of, Government-owned or leased vehicles for other than official purposes.	5 U.S.C. 78c.	Removal.
Fraudulent use of official envelopes.--Using official envelope, label or endorsement authorized by law, to avoid payment of postage or registry fee on private letter, package, or other matter in the mail.	18 U.S.C. 1719.	$300 fine.
Interest in claims against the United States.--Aiding and assisting in prosecution of claim against the United	18 U.S.C. 283.	$10,000 fine; 1 year imprisonment; or both.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Interest in claims.--Continued States, or receiving any gratuity or any share of or interest in claim from any claimant otherwise than in discharge of proper official duties.		
False claims.--Entering into any agreement, combination or conspiracy to defraud the Government of the United States or any department or officer thereof, or any corporation in which the United States is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim. Presenting for payment or approval by any person or officer in civil, military, or naval service of the United States or any department thereof, any claim upon or against the United States knowing such claim to be false fictitious, or fraudulent. Knowingly and willfully falsifying or concealing or covering a material fact by any trick, scheme, or device. Making false or fraudulent statements or representations. Making false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing same to contain any fraudulent or fictitious statement.	18 U.S.C. 287, 1001.	$10,000 fine; 5 years imprisonment; or both.
Abuse of Government documents or records.--Willfully or unlawfully concealing, removing, mutilating, obliterating, or destroying records or documents.	18 U.S.C. 2071.	$2,000 fine, 3 years imprisonment, or both. If the guilty person was in charge of the records or documents, and actually concealed,

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Abuse of Gov't. documents.-Contd.		removed, mutilated, falsified, obliterated, or destroyed them, $2,000 fine, 3 years imprisonment, or both, plus removal and perpetual disqualification for Federal office.
Attempting to conceal, remove, mutilate, obliterate, or destroy records or documents; taking or carrying away records or documents, with intent to conceal, remove, mutilate, obliterate, destroy, or steal them.		
Taking and carrying away, without authority, from place where filed or kept, any document or file, intended to be used or presented to procure payment of money from or by the United States; presenting, using, or attempting to use any such document or paper, in order to procure the payment of any money from or by the United States.	18 U.S.C. 285.	$5,000 fine; 5 years imprisonment; or both.
False certificates.--Giving certificate or other writing, containing any statement which is known to be false.	18 U.S.C. 1018.	$500 fine; 1 year imprisonment; or both.
False entries or reports.--Following acts when performed by any person holding office or employment under the United States, and charged with the duty of keeping accounts or records of any kind: Making in any such account or record any false or fictitious entry, or aiding or abetting any such	18 U.S.C. 2073.	$5,000 fine; 10 years imprisonment; or both.

605

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
False entries.--Continued. person in so doing, with intent to deceive or defraud the United States or any person. Following acts when performed by any person holding office or employment under the United States, and charged with the duty of receiving, holding or paying over moneys, to, for, or on behalf of the United States, or of receiving, or holding in trust for any person any moneys or securities: Making false report of any moneys or securities or aiding or abetting any such person in so doing, with intent to deceive or defraud the United States or any person.		
Failing to make returns or reports.--Neglecting or refusing to make any return or report which any officer is required to make at stated times by any act of Congress or regulation of the Treasury Department, other than his accounts, within the time prescribed by such act or regulation.	18 U.S.C. 2075.	$1,000 fine.
Failing to render accounts.--Failing to render accounts as provided by law for public money received other than salary, pay, or emolument.	18 U.S.C. 643.	Fine equal to sum embezzled; 10 years imprisonment; or both. (For embezzlement of amount not exceeding $100, $1,000 fine; one year imprisonment; or both.)
Failing to make deposit when required.--Failing to deposit with the Treasurer or some public depositary money in	18 U.S.C. 649.	Fine equal to sum embezzled; 10 years imprisonment; or both. (For

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Failing to make deposit.--Cont'd possession or under control when required to do so by the Secretary of the Treasury or the head of any other proper department.		embezzlement of amount not exceeding $100, $1;000 fine; one year imprisonment; or both.)
Failing to dispose properly of moneys accruing from lapsed salaries or unused appropriations for salaries.--Failing to cover into the Treasury any moneys accruing from lapsed salaries or unused appropriations for salaries.	5 U.S.C. 50.	Removal (mandatory); $1,000 fine or one year imprisonment.
Contracting beyond specific appropriation.--The following act when performed by an officer of the United States: Knowingly contracting for erection, repair, furnisning of public building, or for any public improvement, to pay larger amount than specific sum appropriated for such purpose.	18 U.S.C. 435.	$1,000 fine and 1 year imprisonment; or both.
Making official contract with Member of Congress.--The following act when performed by an officer of the United States: Making or entering into any contract, or agreement on behalf of the United States directly or indirectly, with any member of or delegate to Congress or Resident Commissioner, after his election before or after qualifying for office.	18 U.S.C. 432.	$3,000 fine.
Participating in importation, distribution, or advertising of immoral articles.--Knowingly aiding or abetting any person in violating any provision of law which prohibits	19 U.S.C. 1305 (b).	$5,000 fine; 10 years imprisonment at hard labor; or both.

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TABLE OF MISCELLANEOUS OFFENSES -- CONTINUED

NATURE OF OFFENSE	LAW	MAXIMUM PENALTY
Participating in importation, distribution.--Continued importing, advertising, sending, or receiving by mail articles of immoral use or tendency, or books or writings advocating treason or insurrection against the United States.		
Strikes.--Participating in any strike against the Government of the United States.	Sec. 305, Public Law 101, 80th Congress, 1st session.	Immediate removal; forfeiting civil service status; ineligibility for reemployment for three years by the United States or any agency thereof.
Accepting salary or compensation after engaging in a strike against the Government of the United States or while holding membership in an organization of Government employees that asserts the right to strike against the Government of the United States.	Appropriation acts.	$1,000 fine; one year imprisonment; or both.

608

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Procurement of contract by officer or member of Congress.--The following act when performed by an officer of the United States: Directly or indirectly receiving money or anything of value in return for obtaining or giving a government contract or rendering assistance in that connection.	18 U.S.C. 216 (formerly Criminal Code, Sec. 112)	$10,000 fine; 2 years imprisonment; or both; permanent disqualification from holding Federal office.
Compensation to members of Congress, officials and others in matters affecting the Government.--Officers and agents of the United States are forbidden the following act: Directly or indirectly receiving or agreeing to receive any compensation for services rendered in connection with any government contract, claim, or other matter in which the United States is interested.	18 U.S.C. 281 (formerly Criminal Code, Sec. 113)	$10,000 fine; 2 years imprisonment; or both; permanent disqualification from holding Federal office.
Interested persons acting as Government agents.--Acting as a Government officer or agent for the transaction of business with a corporation or organization in which the agent is financially interested.	18 U.S.C. 434 (formerly Criminal Code, Sec. 41)	$2,000 fine; 2 years imprisonment; or both.
Use of confidential information for speculation.--The following act when performed by an officer or employee of the United States, or any department or agency thereof: Using confidential information, received by virtue or office or employment, in speculating directly or indirectly on any commodity exchange, or disclosing such information to aid any other person so to speculate. (The term speculate, as used herein, does not include a legitimate hedging transaction, or purchase or sale which is accompanied by actual delivery of the commodity.	Sec. 710(e) Public Law 774, 81st Congress 2nd Session	$10,000 fine; one year imprisonment; or both.

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RESUME OF A PRESENTATION GIVEN TO THE BOARD ON 3 JANUARY 1957 CONCERNING THE PROCEDURES IN EFFECT FOR DISPOSITION OF CASES INVOLVING HOMOSEXUAL ACTIVITIES OF MEMBERS OF THE NAVAL SERVICE

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CASES INVOLVING OFFICERS ON ACTIVE DUTY AND ON THE RETIRED LIST OF THE NAVY

1. INCEPTION.

The origin of cases involving an officer is identical with that described in paragraph 1 under Enlisted Cases. No further comment is considered necessary for the purpose of this discussion.

2. INVESTIGATION.

The investigation of cases arising among officer personnel is instituted by the officer's commanding officer to the appropriate District Intelligence Office or through the commanding officer's own Security Office. A request for such investigative assistance is usually made by formal letter, and only after the commanding officer has fully evaluated the allegations received in the officer's case, and after such evaluation has determined that an investigation was required.

3. REPORTS.

After receipt of the completed report of investigation which was requested by the commanding officer, and after full evaluation of the information contained therein indicates that the processing under SecNav Instruction 1620.1 of 5 June 1953 is required, the commanding officer takes the following action:

(a) Obtain the Statement. This may be a statement given by the subject to the Investigating Authorities, witnessed and attested, wherein the individual confesses in detail his homosexual activities. He may include any statement he desires in his own behalf. Should he not desire to make such statement he should so indicate over his signature.

(b) Obtain Statements of Witnesses. Statements of witnesses, if appropriate, are included. This often includes the statement of the co-participant in the act or acts.

(c) Obtain Psychiatric Reports. At the outset of any processing under current instructions, the commanding officer should refer the subject to an appropriate medical activity for psychiatric evaluation. If at all possible, a psychiatric report should be worked up by a qualified psychiatrist.

(d) Prefer Sample Charges and Specifications. In appropriate cases,

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sample charges and specifications are included concerning the offense or offenses as alleged in the case.

(e) Provide the Subject With An Opportunity to Tender His Resignation for the Good of the Service. Should the individual desire to resign his commission in the Naval Service in lieu of further processing of his case under SecNav Instruction 1620.1, he should be advised that he is privileged to submit his resignation for the good of the service and to escape trial by General Court Martial, (in Class II cases), or for the good of the service, (in Class III cases).

(f) Refer for Trial by General Court-Martial. This action is taken only in Class I cases, or in those cases of Class II where the officer declined to submit his resignation.

(g) Commanding Officer's Letter and Recommendation. This letter forwards all the information outlined in (a) through (e) above to the Chief of Naval Personnel, and includes such comments and recommendation as the commanding officer may consider appropriate.

4. PROCESS WITHIN THE BUREAU.

Upon receipt of a case in the Bureau of Naval Personnel, it is reviewed in the Officer Performance Division. This activity will return it for further investigation, return it for trial by General Court-Martial, or consult appropriate departmental activities, should such action be considered warranted. After it is determined that the case is complete in all respects, the same is referred to a board of officers for findings, opinions, and recommendation.

5. BOARD OF OFFICERS.

Every case received in the Bureau of Naval Personnel which has not been referred for trial by General Court-Martial is referred to a board of officers for full review and appropriate recommendation based upon Navy Department policy. All information in the individual's case, which includes his service records, fitness reports, investigation files, and papers from the field will be available to such board. This board may recommend: (a) acceptance of the resignation as submitted, (b) acceptance of the resignation in other form, (c) retention in the Naval Service, or (d) the initiation of correspondence for additional information. Each board convened in the Bureau of Naval Personnel is composed of three officers who are senior to the individual under consideration, the majority of which are members of the reserve components, should the subject be a reserve officer, and a female officer if the subject is a female.

6. RECEIPT AND APPROVAL.

The recommendations of the board of officers in each case is forwarded to the Chief of Naval Personnel via the Director, Officer Performance Division,

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and the Assistant Chief for Performance. The case is then forwarded to the Secretary of the Navy for final action. In the normal course of events the Secretary of the Navy will require prior review in the office of the Judge Advocate General before his final action.

7. IMPLEMENTATION OF APPROVED RECOMMENDATION.

Following the final approval by the Secretary of the Navy in those cases involving discharge, the Chief of Naval Personnel forwards appropriate SecNav orders to the officer concerned, via his commanding officer. An appropriate discharge certificate is forwarded to the subject at his home subsequent to his discharge.

8. SECNAV INSTRUCTION 1920.1 AND SECNAV INSTRUCTION 1900.2.

In cases of reserve officers wherein General Court-Martial is not possible or feasible, and wherein the officer has demonstrated reluctance to tender his resignation, the provisions of SecNav 1900.2 may be appropriately utilized in processing for administrative discharge. Under that instruction, the board of officers previously described herein may be convened for such purpose. In the event such action is taken, it is necessary to provide the officer concerned with prior notification, in order that he may arrange to appear before the board in person, should he desire.

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CASES OF INACTIVE OFFICERS OF THE NAVAL RESERVE

1. INCEPTION.

The origin of cases involving an officer, whether on active or inactive duty is identical with that described in paragraph 1 under Enlisted Cases. No further comment is considered necessary for the purpose of this discussion.

2. INVESTIGATION.

The investigation of cases arising among inactive reserve officer personnel is normally initiated by the Chief of Naval Personnel to the Director of Naval Intelligence after a full evaluation of the allegations received. A request for such investigative assistance is usually made by formal letter and only after a full evaluation of the case, if determined that investigation was required.

3. REPORTS.

After receipt of the completed report of investigation, and after full evaluation of the information contained therein, the Chief of Naval Personnel, acting through the Head, Officer Performance Division, takes the following action:

(a) Obtain the Statements. This may be a statement given by the subject to the investigative authorities, witnessed and attested, wherein the individual confesses, in detail, his homosexual activities. He may include any statement he desires to be used in his own behalf. This statement is usually incorporated as an integral part of the investigative file in the case.

(b) Obtain Statements of Witnesses. Statements of witnesses, if appropriate, are included. Statements of this nature often include the statement of any co-participant in specified act or acts. Statements of this nature are usually incorporated as an integral part of the report of investigation.

(c) Status Letter. The Chief of Naval Personnel will address the subject of the investigation a status letter wherein he is informed of the nature of the information in his case and advised that in view of the information contained in his case it is considered that his discharge from the Naval Reserve may be warranted. He is provided an opportunity to submit a statement, request a hearing, (10 USC 1162, 1163), or to tender his resignation from the Naval Reserve in lieu of discharge action. A copy of a form of resignation, usually for the good of the service, is provided as an enclosure to the status letter. This letter is normally delivered to the subject of the investigation via the commandant of his home naval district,

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and provides a period of thirty days in which to indicate his desire to utilize any of the privileges provided him, and outlined above.

d. Refer to Board of Officers in the Bureau of Naval Personnel.

4. BOARD OF OFFICERS.

Every case which is processed in the Bureau of Naval Personnel is referred to a Board of Officers for full review and appropriate recommendation based upon the Navy Department policies. Each board is composed of three officers who are senior to the officer under consideration, the majority of which are members of the Naval Reserve. In those cases where a female officer is under consideration, one member of the Board is a female officer. All information in the individual's case, which includes the service records, fitness reports, investigative files, and papers from the field are made available to this Board. After full consideration of the individual's case, the Board may recommend: (a) acceptance of his resignation as submitted, (b) acceptance of his resignation in another form, (c) retention in the Naval Reserve, (d), discharge from the U. S. Naval Reserve, or (e) the initiation of appropriate correspondence to obtain additional information for its consideration.

5. REVIEW AND APPROVAL.

The recommendation of a Board of Officers in each case be forwarded to the Chief of Naval Personnel, via the Head, Officer Performance Division and the Assistant Chief of Performance. The case is then forwarded to the Secretary of the Navy for final action. In the normal course of events, the Secretary of the Navy will require prior review in the Office of the Judge Advocate General before final action.

6. IMPLEMENTATION OF APPROVED RECOMMENDATION.

Following a final approval by the Secretary of the Navy in those cases involving discharge, the Chief of Naval Personnel forwards appropriate orders to the officer concerned, which are signed by the Secretary of the Navy, via the commandant of the officer's home naval district. An appropriate discharge certificate to the subject is forwarded to his home subsequent to his discharge.

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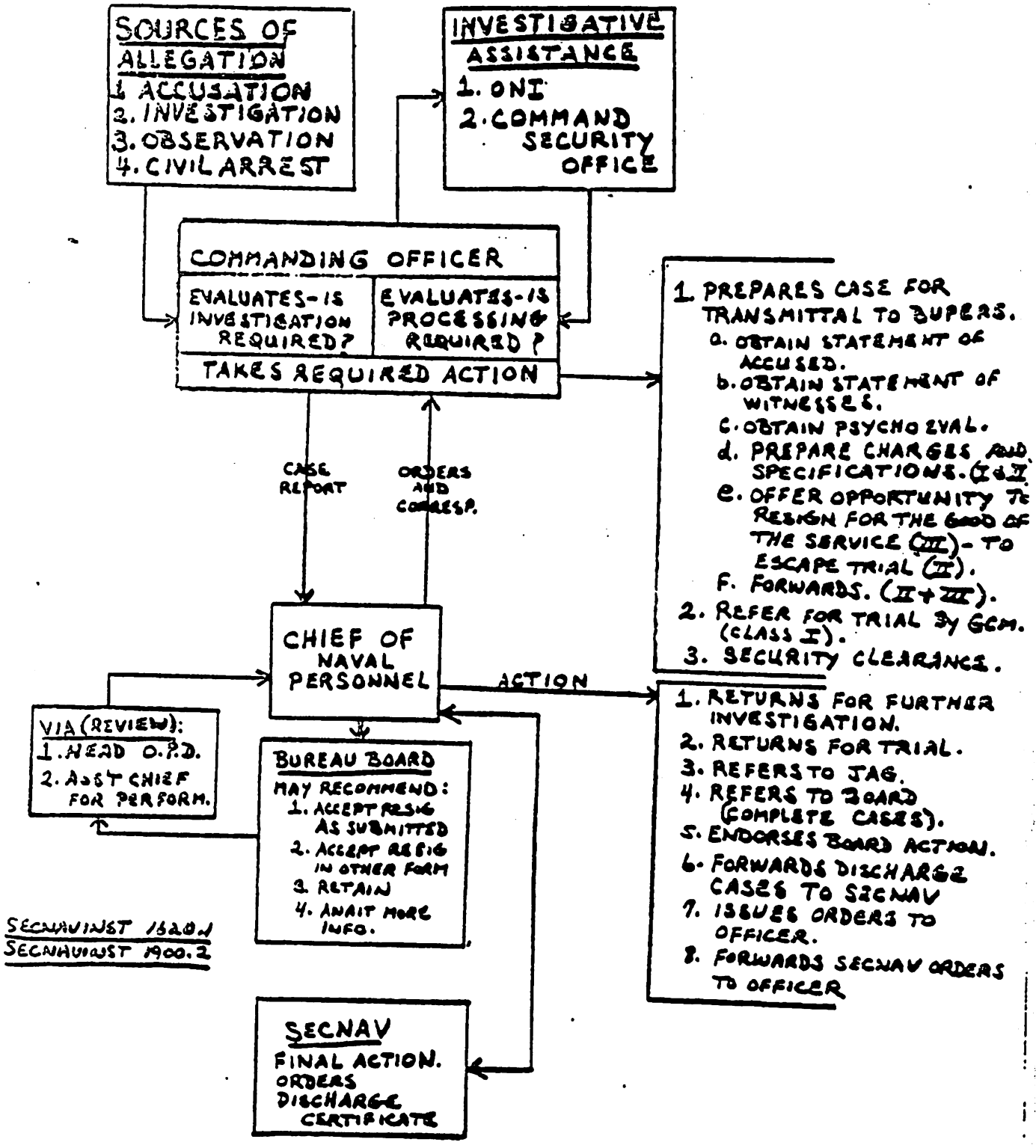
OFFICERS ON ACTIVE DUTY



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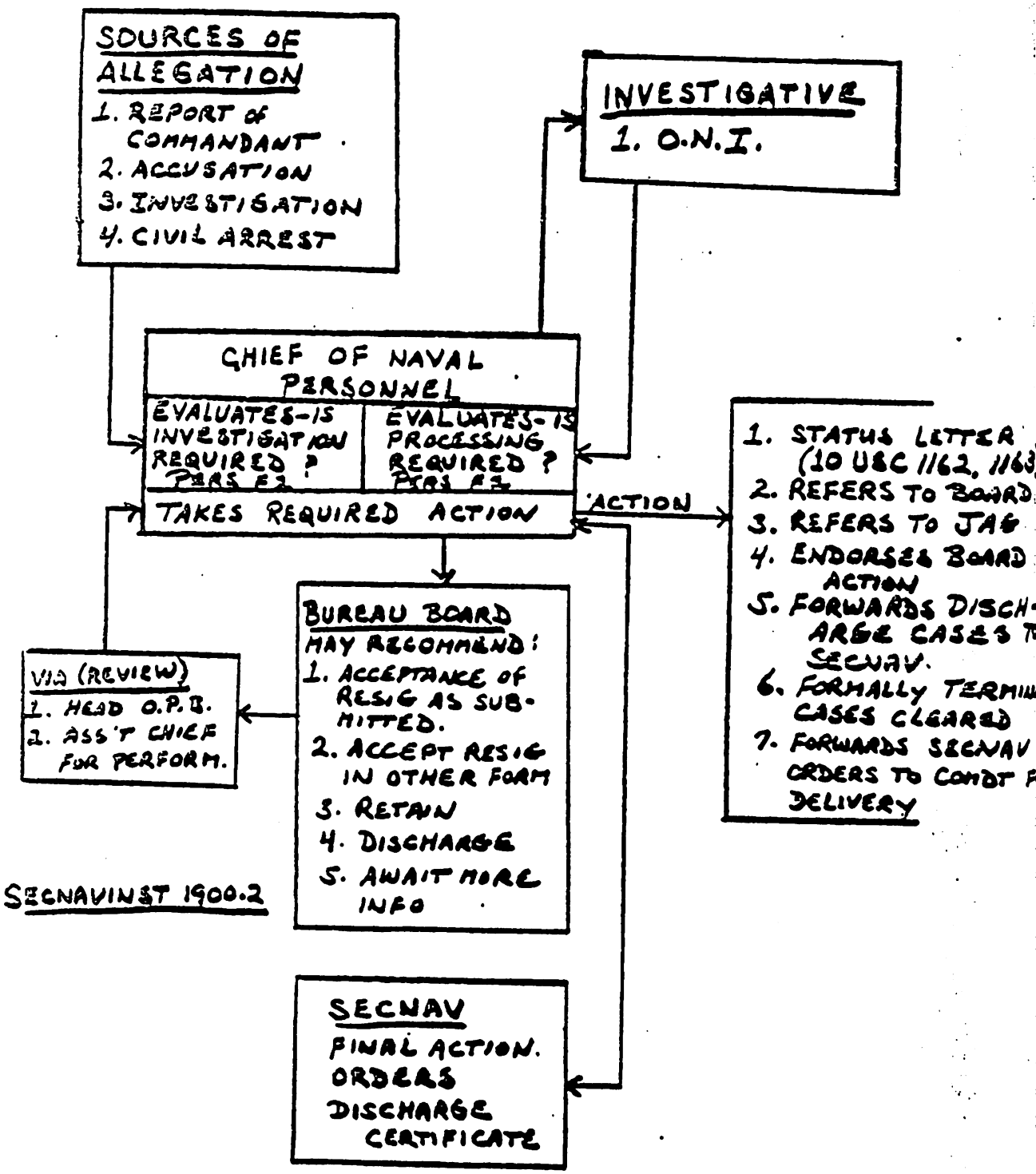
INACTIVE OFFICERS



SECNAVINST 1900.2

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RESUME OF A PRESENTATION GIVEN TO THE BOARD ON 3 JANUARY 1957 CONCERNING THE PROCEDURES IN EFFECT FOR DISPOSITION OF CASES INVOLVING HOMOSEXUAL ACTIVITIES OF MEMBERS OF THE NAVAL SERVICE.

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...E PROCESSING PROCEDURES OF HOMOSEXUAL CASES ARISING WITHIN THE NAVAL ESTABLISHMENT FROM INCEPTION TO RESOLUTION

ENLISTED CASES

1. CEPTION.

...ses involving homosexual activities by naval personnel generally originate in c...of the forms set forth below:

. Voluntary Confessions. Wherein the individual voluntarily confesses his ...mosexual acts or tendencies to his chaplain, medical officer, executive ...ficer or commanding officer.

. Reported by Third Party Witness. Wherein a third party, not a partici...nt, witnesses two individuals in homosexual activities.

Reported by the Victim of an Unsolicited Homosexual Advance. Wherein ... individual has been subjected to a homosexual advance or proposition by ...other individual finding it contrary to his moral standards and who there...ter reports the incident to his superiors.

Implicated by Another's Confession. Wherein during the course of an ...vestigation into the homosexual activities of one person, he implicates ...ose others who have participated with him in homosexual activities. In ...me cases, an individual in one service will implicate another individual ... a different service. The cognizant service of the second individual be...mes aware of the allegations through inter-service exchange of Intelli...nce Reports. To a greater extent, same result is accomplished between ...e Navy and Marine Corps by direct liaison within the Navy Annex.

ONI Reports and Other Cases. Wherein an otherwise unidentified indi...dual is mentioned in an ONI Report or in a statement included in another ...se being processed within the Bureau. The Chief of Naval Personnel ...ntifies the individual through the facilities available within the Bureau ...d requests the Director of Naval Intelligence to investigate.

Civil Convictions. Wherein a ... individual has been apprehended, tried ... convicted in civil court for ... homosexual act not committed within ...val jurisdiction.

...VESTIGATION.

...ter a case has once been brought to the attention of the responsible ...ors, a complete investigation is conducted concerning the allegations. ...investigations may be conducted by trained investigators assigned to ...l commands or to a greater extent, with the cooperation and assistance ...al Intelligence agents located within the District or area.

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3. REPORTS.

After the case has been completely investigated, a report is submitted to the Chief of Naval Personnel which contains the following elements:

a. Commanding Officer's Letter and Recommendation. This includes results of the investigation and all other matters that may be of assistance to the Chief of Naval Personnel in arriving at a proper disposition of the case. Additionally, the commanding officer submits his recommendation in the premise.

b. The Subject's Statement. This may be a statement given to the investigators, witnessed and attested, wherein the individual confesses in detail his homosexual activities. He may include any statement he desires in his own behalf.

c. Sample Charges and Specifications. In appropriate cases (normally Class II, SecNav Instruction 1620.1), sample charges and specifications are included concerning the offense or offenses the individual is alleged to have committed.

d. Agreement to Accept Undesirable Discharge Vice Trial by Court-Martial. Should the individual desire to voluntarily accept an undesirable discharge in lieu of trial by court-martial, such agreement is included.

e. Statement of Awareness that Subject Could Receive an Undesirable Discharge. In certain cases, normally where court-martial jurisdiction does not exist, the case may be processed under Article C-10312, BuPers Manual, which authorizes an undesirable discharge for, among other things, anti-moral and anti-social traits. These cases include, but are not necessarily limited to, the following:

(1) Where pre-service homosexual acts are alleged.
(2) Cases of inactive Reserves.
(3) Wherein the individual only confesses tendencies, but denies any homosexual acts.

It may be noted in passing, that although these cases are processed under the Article which authorizes a discharge for unfitness, those who confess to pre-service acts or only confess to having tendencies are usually awarded a General Discharge Under Honorable Conditions for unsuitability.

f. Psychiatric Reports. A psychiatric report is always included which may or may not have been worked up by a qualified psychiatrist.

g. Statements of Witnesses. Statements of witnesses, if appropriate, are included. This often includes the statement of the co-participant in the act or acts.

4. PROCESSING WITHIN THE BUREAU.

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After the report on a case is received within the Bureau, the following procedural steps are adhered to:

a. Case Is Briefed. The case is briefed by trained briefers and attached to the individual's duplicate service record together with the complete report as received from the command. The brief sheet includes all pertinent information concerning the individual under consideration including: name, service number, rate, class, age, date of birth, military status, previous discharges, date of current enlistment, total service, active and inactive, CCT education, duty station on discovery, pre-service involvement, family background, recreation preferences, place the alleged act took place, race, and the pertinent circumstances surrounding the case.

b. Case Submitted to a Board of Officers. After the case is briefed and attached to the duplicate service record, the entire case is submitted to a board composed of three officers of the rank of Commander, drawn from a sixteen-officer panel. In the case of a Reserve, two of the three officers are themselves Reserves. In the case of Waves, a Wave officer member of the board also sits in judgment on the case and in appropriate cases, the Assistant Chief for Women reviews the case.

c. Board Recommendations. Following evaluation of each case, the board may recommend to the Chief of Naval Personnel anyone of the following actions and disposition:

(1) Retain the individual.
(2) Issue the individual a discharge for the convenience of the Government, with character of the discharge as his service record warrants.
(3) Discharge the individual under honorable conditions for unsuitability.
(4) Discharge the individual as undesirable under other than honorable conditions.
(5) Return the case to the command to obtain more information.
(6) Resolve the case by court-martial trial if the guilt or innocence is in doubt.
(7) Request permission from the Secretary of the Navy to try the individual by court-martial. (This recommendation is appropriate when an individual has been tried and convicted in a civil court for homosexual acts, but who resists administrative separation for the offense).

d. Review and Approval. Each case is reviewed in the Enlisted Performance Division by either the Director or Assistant Director; and in appropriate cases, the Assistant Chief for Performance, the Deputy Chief of Naval Personnel or the Chief of Naval Personnel reviews the recommendations submitted by the board.

e. Implementation of Approved Recommendation. Following approval of the board's recommendation, a letter is issued to the individual's commanding officer directing him to take the action as finally approved.

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
Washington 25, D. C.

14 Nov 1952

From: Secretary of the Navy
To: Chief of Naval Personnel

Subj: Proposed procedures for implementing program of indoctrination of naval personnel at naval training centers as to subject of homosexuality

Ref: (a) BuPers 3-page paper, undated, entitled "Modifications to Recruit Training Curriculum"
(b) BuPers 3-page paper, undated, entitled "Proposed Procedures for Implementing Program of Indoctrination of Naval Personnel at Naval Training Centers as to Subject of Homosexuality"

1. The subject program, as outlined in references (a) and (b), is approved. It is desired that immediate steps be taken to implement this program.

/s/ Francis P. Whitehair

FRANCIS P. WHITEHAIR
Under Secretary of the Navy

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COPY

DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington 25, D. C.

Pers C111-tn
4 Dec 1952

From: Chief of Naval Personnel
To: Captain E. L. Ackiss, CHC
Chaplains Division
Bureau of Naval Personnel

Commander C. J. Covert, CHC
Chaplains Division
Bureau of Naval Personnel

Commander W. A. Walker III, USN
Training Division
Bureau of Naval Personnel

Lieutenant R. C. Bagg, MC
Preventive Medicine Division
Bureau of Medicine and Surgery

Subj: Program of indoctrination of naval personnel at Naval Training Centers on the subject of homosexuality.

Ref: (a) Secretary of the Navy ltr of 14 Nov 1952
(b) BuPers 3-page paper, undated, entitled "Modifications to Recruit Training Curriculum."
(c) BuPers 3-page paper, undated, entitled "Proposed Procedures for Implementing Program of Indoctrination of Naval Personnel at Naval Training Centers as to Subject on Homosexuality"

Encl: (1) Copy of reference (a)
(2) Copy of reference (b)
(3) Copy of reference (c)

1. In accordance with reference (a), the following named officers are hereby appointed as a three-man committee responsible for the implementation of the program described in reference (b) and (c):

Captain E. L. Ackiss, CHC, Chairman
CDR W. A. Walker III, USN
LT. R. C. Bagg, MC

Alternate: CDR C. J. Covert, CHC, will serve as alternate for Captain Ackiss

2. Attention is directed specifically to paragraphs II (A) and II (D) of reference (c) for a discussion of the duties and responsibilities of the committee.

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C O P Y

Pers C111-tn

Subj: Program of indoctrination of naval personnel at Naval Training Centers on the subject of homosexuality.

3. It is desired that the services of Mr. T. J. Mullikin, special investigator, Office of Naval Intelligence, be utilized to the fullest extent practicable.

4. The chairman is directed to convene his committee at the earliest practicable date in order that immediate steps may be taken to get this program under way.

/s/ J. F. Bolger

J. F. BOLGER
Deputy Chief of Naval Personnel

Copy to:
Director of Naval Intelligence (w/o encl.)
Mr. T. J. Mullikin, ONI (with encl.)

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622

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PROPOSED MODIFICATIONS TO RECRUIT TRAINING CURRICULUM

The following changes to the Recruit Training Curriculum are recommended in order to implement present plans for the establishment of a positive program of instruction of recruits relating to the subject of homosexuality. References herein are to NavPers 91789, Curriculum for Recruit Training, August 1951.

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Topic: Introduction.

This is to be a one period introduction to the program of instruction pertaining to homosexuality to be conducted at the beginning of the second week of recruit training. It is not deemed advisable for this period of instruction to be conducted in the first week of recruit training while the recruit is undergoing a maximum period of adjustment to Navy life. On the other hand, neither is it advisable, because of the importance of informing the recruit as to the subject, to delay this topic later than the second week of training. The topic will be covered by and is a joint enterprise of a team of officers especially selected and indoctrinated for this task. One should be a medical officer, one a chaplain, and the third an officer of the line, legal officer strongly preferred. Each officer will conduct the appropriate part of this instruction.

A. Objectives:

1. To acquaint the recruit with the existence of homosexuality and the extreme bad effects to him that would invariably result from his involvement.

2. To pave the way for references to and instruction in this subject in other subject matter areas and topics which follow in the curriculum.

B. Outline of Instruction:

1. General approach: In this topic the subject is to be discussed generally with the various aspects as they affect an individual discussed.

2. As a start and to give the subject its proper relative importance, indicate that there are a good many things that are bad in life. Many of them recruits are already familiar with. These are things such as stealing, lying, immoral discourse, and use of and involvement with narcotics. Fortunately most of us are acquainted with the evil effects that accrue to the individual who becomes involved in these things. During this period emphasis is going to be placed on another very bad thing that exists in life but about which the majority of people know little or nothing. We hear of these other things through radio, the press, and sometimes in school. But in no other place is there information afforded on the subject of homosexuality.

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3. What homosexuality is. Define primarily by examples.

4. Characteristics of homosexuals. The network that exists throughout the country. The fact that there is always a witness who invariably and eventually will talk and reveal the name of all individuals with whom he is a bad homosexual relations.

5. The bad effects:
   a. The tendency of the network
   b. [illegible]
   c. [illegible]
   d. Probable [illegible] heterosexually
   e. [illegible] / disciplinary action with undesirable discharge
   f. [illegible] individual poor security risk
   g. [illegible] to and for juvenile and himself
   h. [illegible] civilian employment -- holding jobs.

6. The [illegible] between homosexuality and alcohol and homosexuality. If you drink, know with that you are drinking and know what you're doing.

7. Closely connected with all other forms of crime,--homicide, assault, robbery and holdup, stealing and all other form of personal offenses. [illegible] enlistment.

8. Illustrate all of above points with examples -- case histories.

C. Suggestions to the [illegible] matters:

The presentation of this topic is to be formal calmly, seriously, and objective. The fundamental concept is that officers and petty officers of Recruit Training Commands will follow up and present the same attitude toward this subject to all recruits. To this end it is considered necessary that there occur positive instruction of all prospective Company Commanders in Company Commanders School on the handling of this subject during Company Command time and during various unscheduled and informative periods when this subject may be discussed among recruits.

The subject is not to be "dressed up" in high flown technical language. Homosexuality is weak, it is evil, and it is to be treated as such. No pulling of punches or inferences that the matter is not serious. Nor are homosexuals to be referred to as being "mentally sick". A homosexual, therefore is to be considered as a moral no more than would a person who would walk into a house and kill the occupants, for homosexuality is a killer too. To make matters worse, it kills characters, ruins and degrades before all the world.

D. References.

Case histories of various types -- to be provided.

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Area I, Topic 4, Religious Life in the Navy (page 25):

Instruction on homosexuality to be included in chaplain's lectures. To be developed and handled upon instructions from the Chief of Chaplains.

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Area I, Topic 5, Naval Discipline (page 26):

B(5)(b)(2)(c)--using case histories, cite examples of lasting effects of undesirable discharge resulting from involvement in homosexuality. Cite case histories in which normal civilian life was made impossible because of the bad record and bad effects.

- - - - - - - - - - - - - - - - - -

Area I, Topic 10, Security of Information (page 41):

B(2): add (e) as follows:
(e) Homosexuals are bad security risks. The operation of the homosexual "network" makes them vulnerable to disclosure and blackmail. There are known cases where important national military secrets have been revealed because of pressures from homosexuals. Cite cases in World War II.

- - - - - - - - - - - - - - - - - -

Area V, Topic 3, Personal Hygiene (page 100):

Under B add:

11. Navy's attitude and approach to problem of homosexuality:
a. Stress in training that homosexual acts cannot result in venereal disease. Explain that there are a significant number of cases of transmission of venereal disease through homosexuality with particularly painful results. Cite examples.
b. The possible harm that involvement in homosexuality makes the individual unfit for heterosexuality.

- - - - - - - - - - - - - - - - - -

Area VI: Company Orientation Requirements.

At various times Company Commanders will use portions of their time with recruits to support and augment instruction pertaining to homosexuality. Their approach will be exactly that set out by the text of officers responsible for the introduction to the subject. The subject will not be treated lightly or jocularly or crudely. Language to be used may be blunt to certain in order that there will be no misunderstandings. Instruction will be straightforward. The Company Commanders will answer questions directly and factually. He will emphasize the serious consequences involved and the bad effects that accrue to any individual who lets himself get involved.

C-25

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Proposed Procedures for Implementing Program of Indoctrination

of Naval Personnel at Naval Training Centers as to

Subject of Homosexuality

I. Fundamental Concept:

Recruits and other naval personnel need to be indoctrinated as to the existence of homosexuality, the effects upon the individual who becomes involved in it, and the Navy's attitude toward it.

The approach shall be that:

1. Homosexuality is one of the very bad things encountered in life. In training of personnel emphasis upon homosexuality becomes necessary because there are few other means for obtaining information about it. Information about murder, stealing, lying, and other crimes flows continuously to people through the press, radio, and institutions of learning. For the protection of naval personnel, therefore, this instruction is necessary.

2. The bad effects to the individual of any involvement is to be emphasized.

3. Case histories illustrating pertinent points will be used.

4. The subject is not to be treated lightly, jocularly, crudely or vulgarly. There is nothing funny about it. It is serious business. Instruction will be given in a straightforward, factual manner. Language used is not to be vulgar; but sufficiently "down to earth" to insure that there is no misunderstanding. The subject is not to be "dressed up" in technical language. Nor is there to be any intimation that people who engage in such practices are "mentally sick". Homosexuality is wrong, evil and an offense to all decent and law-abiding people, and is not to be condoned on grounds of "mental illness" any more than other crime such as theft, homicide, or criminal assault.

II. Implementation:

A. A three man board or committee be established at Navy Departmental level, consisting of one officer of the line, preferably a legal officer, one medical officer and one Chaplain to exercise control as to planning and policy in the setting up of the above-outlined training program in various field commands by: (1) Impressing the seriousness of the situation through facts and figures, and (2) instructing similar boards appointed by Commanding Officers at Training Centers and command levels. This board would also maintain necessary supervision at Washington level once this program is launched.

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B. A three man team be established at Training Center level to exercise planning and implementing control functions for the program at each Training Center.

C. As many sub-teams (3 men each -- legal, medical, chaplain) as required be established in each command for the following purposes:

1. Perform actual instruction of recruits in the introduction to this subject (1 period). Each of the three officers provides instruction as appropriate from his point of view.

2. Provide necessary instruction to Company Commanders (Company Commanders School) and other instructional personnel having assignments involving instruction as to the subject.

3. Perform actual instruction periodically in the Service Schools, Administrative Commands and hospital commands so as to include all personnel newly arrived since the previous instructional period

4. Assist in the selection of personnel who give lectures and instruction of any kind in connection with this subject.

5. Exercise technical supervision over the instruction in accordance with policies and procedures established by Training Center committee and higher authority.

D. General Operating Procedure:

1. The three man committee functioning on the Navy Department level will recommend policies and take plans, in whatever detail as considered practicable, for the implementation of the program.

2. The committee (or team) will prepare and approve any written material necessary.

3. It will visit each Naval Training Center in which this program is to be established, explain the program to Center Commanders and Commanding Officers, and instruct Center Command teams in the approaches to the subject and procedures to be followed. Of particular importance in this, is the utilization of the services of Mr. T. J. WILLIAMS, special investigator, Office of Naval Intelligence, who is available to visit the Training Centers and supply much factual and case history information essential to the intervention.

4. After inauguration of the program at the Training Centers, the Navy Department committee will exercise supervisory control in the name of the Chiefs of their respective Bureaus or Offices, over the further development and implementation of this program.

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[illegible] will serve [illegible] and [illegible] the capacity to [illegible] Division of the Bureau of Naval Personnel on matters [illegible] the exercise of management control (not delegated to [illegible] and in the field of Naval Personnel.

[illegible] will be required in Recruit Training as follows:

[illegible] part of [illegible] Recruit [illegible] presentation of the subject by a sub-area Chaplain, [illegible], Medical Officer or other [illegible]. The period [illegible] Recruit training.

[illegible] topics of instruction and [illegible]

[illegible] Lecture)

[illegible] undesirable discharge [illegible]

[illegible] - M. D.

3. Company Commander's Time: Company Commanders will be prepared to answer questions from recruits pertaining to the subject. In so doing, they will conform rigidly with the established approach to the subject and will support exactly the instruction provided in the Introduction by the team of officers. To repeat, the subject will not be treated lightly, jocularly, or crudely. Language will not be vulgar, but will be sufficiently down to earth to be sure that there is no misunderstanding. The Company Commander will answer questions in a straightforward manner and factually.

F. Materials.

Instructional outlines (amendments to NavPers 91789, Curriculum for Recruit Training) will be made available for the Introduction (1 period) and additions to other topics involved. See E(1) and (2) above.

A primary source of material will be factual data and selected case histories as supplied by Mr. HALLIDAY of the Office of Naval Intelligence; these to be in written form on tape recordings or other aids in deemed desirable.

638

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C O P Y

Pers-C111-tn

22 Dec 1952

From: Chief of Naval Personnel

To: LCDR Mary K. BONDS (W), USN
Training Division
Bureau of Naval Personnel

Subj: Program of indoctrination of naval personnel at Naval Training Centers on the subject of homosexuality

Ref: (a) Chief of Naval Personnel ltr Pers C111-tn of 4 Dec 1952
(b) Secretary of the Navy ltr of 14 Nov 1952
(c) BuPers 3-page paper, undated, entitled "Modification to Recruit Training Curriculum"
(d) BuPers 3-page paper, undated, entitled "Proposed Procedures for Implemsnting Program of Indoctrination of Naval Personnel at Naval Training Centers as to Subject of Homosexuality"

Encl: (1) Copy of reference (a)
(2) Copy of reference (b)
(3) Copy of reference (c)
(4) Copy of reference (d)

1. It is intended that the program of indoctrination of naval personnel on the subject of homosexuality described by reference (c) and (d) and directed by reference (b) include women personnel. You are hereby appointed as an additional member of the committee appointed by reference (a) for the implementation of this program and will function as the line officer of that committee on all matters pertaining to the indoctrination of women personnel.

2. Attention is directed specifically to paragraphs II (A) and II (D) of reference (d) for a discussion of the duties and responsibilities of the committee.

/s/ J. F. BOLGER
Deputy Chief of Naval Personnel

Copy to:
Pers-K
Pers-C
Pers-C12
Pers-C 1121
Pers-C11
Pers-J
Captain E.L. Ackiss, ChC
CDR C. J. Covert, ChC
CDR W. A. Walker, III, USN
LT. R. C. Bagg, MC

6.29

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INDOCTRINATION ... WAVE RECRUITS ON SUBJECT OF HOMOSEXUALITY

Part I - Line Officer's Section

Good morning/afternoon! I am _____. The officer on my right/left is Dr. _____. The officer on my left/right is Chaplain _____. We would like to speak to you today about a subject with which, very likely, many of you have never been confronted and on which most of you, perhaps, have never heard a formal discussion. The subject is homosexuality. The Chaplain and the Doctor will talk to you concerning the medical and religious aspects of this problem. I shall speak to you as a woman officer because there are some things about homosexuality that concern us as women in the service. This presentation is to tell you the facts concerning homosexuality and most important of all, how to avoid becoming involved with homosexuals. This doesn't mean that homosexuals are a brand new-type of person. We have long had them in our society. Such people are found in all walks of civilian life. Some of them enlist in the Navy. Those who do enlist in the Navy do not stay long. They are discovered, and when they are, they are eliminated from the service. Unfortunately, this type of woman is not always found out before she has had the opportunity to involve other previously innocent young women in her homosexual acts. My purpose today is to:

(1) warn you that there are homosexuals.

(2) inform you why the Navy doesn't tolerate homosexuals in the Naval service.

(3) tell you what can happen if you are foolish enough to commit a homosexual act.

(4) and most important of all, to show how any one of you may become involved in a homosexual act unless you understand the circumstances under which the homosexual may make an approach to you.

Let us first review the definition of homosexuality. It is sexual gratification of an individual through physical contact with another person of the same sex. A homosexual, then, is one who gratifies her sex desires by being sexually intimate with another woman.

You may ask, how can a young woman who has always led a wholesome life become involved? There are several techniques which may be used by the practicing homosexual

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to lure you into involvement in a homosexual act.

One of the most commonly used techniques is for a practicing homosexual friendship as a means to secure for herself a partner in her homosexual acts. practicing homosexual may be of any profession or walk of civilian life, or she have become a member of the Navy. You may meet her out on liberty, or you may her in your barracks. The practicing homosexual may begin her approach to you a sympathetic, understanding and motherly person. At first she will present th same appearance as many of your friends. She will have many interests in comm with you, but as time progresses you will be aware that she is developing this friendship as much as possible along emotional lines. This person may begin to demand all of your time, and to shower you with expensive gifts, and to pay all expenses when you are out together. Even though you may never have indulged in alcohol, she may initiate you into the "art of social drinking." She may plan activities that will end in parties where heavy drinking is being done. She m plan more and more time for the two of you to be alone.....late rides in her c intimate conversations between the two of you, and physical advances such as c braces. As time goes by, she may propose that you take a week-end trip with h a near-by city, to sightsee or take in a show. This trip will involve sharing hotel or motel room. When you are alone...she orders drinks...and more and mor alcohol is consumed. Then follow the improper physical advances and a homosex act is committed.

Not long ago, a young Wave received an undesirable discharge from the Navy because of homosexuality. She was a nice young woman from a fine family. How she become involved? Because she was curious. She had heard about homosexuali but had never known any homosexuals. So when one approached her, she thought i would be "fun" to learn more. Before she knew what had happened, she had been seduced....and was a partner in a homosexual act. Feelings of fear and shame followed. Normal young women wouldn't associate with her. For friendship, she no one to turn to but the very people who had led her into perversion. Shortly thereafter she was discharged from the Navy as an undesirable.....a high price pay for curiosity.

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It is extremely important for all of you to have a basic understanding of this sort of behavior in case you should run into the practicing homosexual. Let us look at a few situations that might tend to influence your reactions. You all want a normal amount of adventure and excitement. You may have been dissatisfied with the job opportunities in your home town. There was no chance for future advancement and your chief enemy was boredom. In many areas, the male population has been depleted due to required military service, and men of your age were not available for dating and companionship. Some of you may have had an unhappy and unsatisfactory home life. All of these points really add up to one basic need we all have....the need for affection. We require affection for complete development of our personality and character If a young woman handles the desire for love and affection as it was intended, she will proceed in due time to a happy marriage or toward a well-adjusted single life with a career. If she lets this desire express itself in familiar and intimate sexual acts with another woman, then she has involved herself with homosexuality.

The young woman who becomes involved with the practicing homosexual usually fails to recognize that the insistent personal attention was not the innocent offer of friendship it appeared to be. She was not fully aware that her own emotional and physical desires for love were being exploited and diverted to unnatural conduct. She fails to realize that a homosexual is not necessarily a woman with a mannish haircut, swaggering stride or deep-pitched voice, but may appear quite feminine.

There are several other techniques I would like to mention briefly so that you will be aware of them.

A woman homosexual may use a technique that is opposite to the one of kindliness, protective sympathy, and understanding. Her approach may be signalled by domineering, severely bossy, mentally cruel or bossy conduct toward the individual approached. This technique is to secure the domination of the sought individual, and to gain mastery and control over her. Just how this dominance is secured, whether through timidity or fear does not matter...it may lead to seduction.

The "Come-on-and-no-risk" approach is still another technique that may be used, and it fits into the battle against boredom. Navy women may be propositioned to

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indulge, just a little bit in homosexuality, "because you can have a lot of fun with no after effects. Frankly, what is being said is that you can experience sexual stimulation and sexual satisfaction in a homosexual act without risk of pregnancy.

Reactions of shame, confusion, and fear follow involvement in these homosexual acts. Even though she may try to justify her actions because she was merely the passive partner, a young woman must remember this.....it takes two people to complete the homosexual act. It makes no difference how it was conducted. Both parties to the act are equally guilty. The fact that none or both parties were under the influence of alcohol at the time of the homosexual act makes no difference. That does not in any way excuse a person of being a guilty party to the act. In many instances, a previously innocent young woman may become a homosexual, and in turn proceed to seduce another young woman in a homosexual act.

It is important that you understand the Navy's policy toward homosexuality. The policy of the Navy is quite positive in that all persons found guilty of so much as one single homosexual act while in the Naval service must be eliminated from the service. The "first timer" or experimentor is just as liable to separation as a confirmed homosexual. A woman is not tried for being a homosexual, she is tried for committing a homosexual act. One thing is certain, she is going out of the Navy and fast. Under certain circumstances she will be given an undesirable discharge, commonly called a U.D. It means she has been discharged from the Navy as an undesirable, and her discharge papers will state that it is under conditions other than honorable and without satisfactory service. In certain circumstances she may face trial by General Court-Martial.

Answer these questions for yourselves.....if you were discharged from the Navy for committing a homosexual act.....what kind of a job would you be able to get? The person hiring you would investigate and find out that you were not the type of person who would be a good risk as an employee. Government employment is impossible. You may loose virtually all rights as a veteran under both Federal and State legislation. You would probably be reduced to getting a job of such low level and so

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undesirable that your ... wouldn't bother to investi...

What would you tell your family and friends? Or the man you hope someday to marry? Could you tell them that you were discharged from the Navy as an undesirable, or were Court-Martialled for abnormal sex practices? These facts have an unpleasant way of ... no matter how much you try to hide them.

... rid itself of homosexuals. They lower morale ... to serve in an organization where they are ... mentally impotent women and at the very least ... mentally poor security risks.

... parents, and friends of women who have been discharged from the Navy for homosexual acts, write tearful letters to the Navy Department in Washington, D. C., begging for relief from the type of discharge they have received. They claim the Navy has branded them as homosexuals, and because of this they find it difficult to earn a living, or find an acceptable young man for dating, companionship, or possible marriage. Actually, the Navy has not branded these women. They have branded and disgraced themselves, and no relief is possible. Women who engage in homosexual acts cannot and will not be tolerated by the United States Navy.

This discussion would not be complete without touching on the effects these homosexuals have on the group. The barracks must be shared by all. This means that everyone's rights and sensibilities must be considered. Homosexuals carrying on ... activities of physical contact create an attitude of disgust, and the barracks becomes an unpleasant place for fine normal women to live. Their behavior not only effects their own reputation but it affects the reputation of all women in the barracks. The practice of homosexuality creates a very definite moral problem. The woman homosexual is an unfortunate individual. She is unfortunate because she has not learned to appreciate the normal rewards and satisfactions of maturity. From the point of view of the Navy, she not only does not behave as a normal woman should, but she is dangerous because she influences other women toward homosexuality.

If a homosexual makes an approach to you.....stay away from her. If you have evidence of homosexual acts report them to the proper authorities. You may think

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[illegible] not be involved with homosexuality, but some less informed woman [illegible] protect her as well as yourself from abnormal sex practices.

Remember, the fine friendships between normal, decent women is not the thing I'm referring to today. The many wholesome friendships formed in the Naval service are one of the finest influences in barracks and social life. These friendships are of great value to the Navy woman, both while in the service and in civilian life when she has returned to her home. The annual reunion celebration of Navy women throughout the United States every year gives some concept of the importance of such friendships. It is good for young women coming into the service to use their petty officers as guides and models of service life. Be wise in your choice of friends. Be alert to avoid emotional pitfalls.

Finally, all of us should be very proud to be women serving in the United States Navy, but let us be sure that we retain as much of our basic femininity as possible. We are not competing with the men....we are supplementing and complementing them. We must take pride in the kind of things women do well....that of setting a high standard of conduct by living in accord with the moral beliefs of our society.

May I now present Doctor _____, Medical Corps, U. S. Navy, who will speak to you on the medical aspects of homosexuality.

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MEDICAL OFFICER'S PRESENTATION (NAVY RECRUITS)

The medical officer, particularly one that specializes in psychiatry, is interested in homosexuality as an abnormal form of human behavior. While the duties of the medical officer are principally those of understanding and caring for sick people, he must maintain the broad point of view which is directed to the understanding of all types of behavior, good and bad, normal and abnormal, individual and group. This does not mean that he approves or excuses homosexuality any more than he does any type of behavior which is socially unacceptable such as thievery, alcoholism, and drug addiction.

Homosexuality is not on the increase but that which is present is wide-spread and homosexual activity occurs under varied circumstances. The psychiatrist encounters individuals throughout this range, from those who are exclusively homosexual, having no interest in the opposite sex, to those who "dabble" experimentally at one time or another. Because of this variation in homosexual activity, each individual concerned needs separate study and evaluation.

Generally speaking, homosexual activity is the manifestation of failure on the part of the individual to grow up sexually, which leads to personality disorders in adult life. This is true whether the individual be exclusively homosexual or only a "dabbler". In the process of growing up, individuals not infrequently have one or more sexual experiences with someone of the same sex and of relatively their own age, on the basis of curiosity and experimentation. The psychiatrist considers this commonly occurring sexual activity of childhood and early adolescence as a developing and growing-up process which has very little to do with the subject under discussion today - that is, the homosexual activity of the grown-up or the adult. What you have done in your younger and developing period of life is NOT to be taken as placing you in a position of the person under discussion today, or to be in a position of danger. To draw a comparison, it is not that you wet the bed as a child but do you wet the bed today.

By virtue of the fact that you are now in the Navy, you are considered grown-up

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and adult behavior is exp ed of you. If such behavior ot forthcoming, you wi be held accountable. pause a moment and think -- th . is not unlike civilian li where cultural, social, and educational influences serve as a constant curb to a person's wishes, desires, and actions which are considered as not being mature or grown-up.

Some individuals, influenced by alcohol, money, curiosity, or some other circumstance, may become involved or participate in a homosexual act. They then contend that they themselves are not "homosexual" and offer this as a defense of their behavior. Medically speaking this may be true, but from the Navy's point of view such a medical opinion makes no difference whatsoever. In the Navy, you are not accused of being "homosexual" but are accused of engaging in a homosexual act. Obviously, it takes two to comprise a homosexual act and insofar as the Navy is concerned, one party of the act is as guilty as the other of an offense against the naval organization and its social structure.

Several common misconceptions exist about homosexuality and it is these misconceptions which lead people into trouble. One such misconception is that it is easy to identify a practicing female homosexual by her masculine mannerisms and characteristics. This is not true. Many practicing female homosexuals are quite feminine in appearance and some are outstandingly so. There are probably more femal homosexuals who are completely feminine in appearance than there are female homosexu who are masculine in appearance.

Another common misconception is that those who engage in homosexuality are safe from acquiring venereal disease. This also is not true, as both gonorrhea and syphilis can be readily contracted through sexual relations with females as well as through sexual relations with males. Reports from various clinics reveal one out of every four male and female patients admitted with syphilis acknowledged homosexual contacts as the source of their infection. Practicing homosexuals are notoriously promiscuous and not very particular in whom they pick up, infected or otherwise.

A third misconception is that homosexuals are born and not made. This idea lea to the beliefs, first, that an individual who is not born a homosexual can partici

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in homosexual acts without danger and, second, that nothing can be done medically for the confirmed homosexual. Neither of these beliefs is true. Treatment is available for even the confirmed homosexual but this is not an obligation of the Navy Medical Corps. As to the other belief, repeated dabbling in homosexuality in late adolescense as well as in adulthood can and frequently does constitute the making of a homosexual. Some who start as "dabblers" or "experimenters" progress steadily to become exclusively homosexual in their behavior. Experimentation, therefore, aside from being an infringement on social as well as Navy standards, is dangerous in its own right.

In this entire problem, the medical officer has a two-fold interest: first, and uppermost, he is a naval officer and has an interest in the Navy as a whole. It is his duty to help eliminate disturbing and undesirable factors from the naval service, such as confirmed homosexuals. In the second place, as a physician and a psychiatrist, he offers his experience and knowledge of behavior disorders in helping those who are concerned about this problem. In this latter capacity, he maintains an open door attitude to all, and he is available for interview at your request.

May I now present Chaplain _____ who will speak to you on the social, moral and spiritual aspects of homosexuality.

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CHAPLAINS PRESENTATION (WAVE RECRUITS)

The Chaplain's primary concern with the problem of homosexuality is its relationship to the individual's social, moral and spiritual life. The following factors often play a prominent role in the involvement of women personnel in homosexual activity:

1. The normal desire for social life and social entertainment. The service living conditions, barracks and cubicle life with their lack of personal privacy, the living in close proximity to new and strange women, the normal homesickness, loneliness, etc., all add up to making the Navy woman particularly vulnerable to approaches of friendliness, kindness, big sisterliness, motherliness, etc. Due to these factors, the Navy woman may welcome any offer for friendliness, an invitation out to a meal, to an entertainment, or for a week-end. If the Navy woman accepts free meals, free drinks, and unwholesomely affectionate and insistent sisterly or motherly solicitude, gifts, and attention from another woman, whether in civilian life or in the service, and permits them to ripen into a close, exclusive friendship she is taking a risk of becoming involved.

Since the practicing homosexual may use just this sort of technique in making her approach, the Navy woman must examine carefully any unusual or pressured cultivation, whether out of the service or in the service, even though the cultivation may appear innocent and kindly disposed. There is often an unhealthy and unwholesome interest on the part of an especially insistent person.

2. Social drinking is one of the most frequently used techniques of homosexuals. As you have been advised, drinking removes or lowers inhibitions, both the good and the bad ones alike. It impairs the reason, the will, one's self-control, judgment, and self respect. The practicing homosexual is usually out for new conquests. She knows how to prey upon service women, understanding very well that new girls are often lonely, homesick, disturbed by the strange way of the Navy, and knows that they usually respond to kindly treatment.

Let me emphasize just here, however, that NOT EVERY ONE BY ANY MEANS who offers friendly advice or help to a Navy woman is to be suspected of a homosexual approach.

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Usually the Navy woman has her own group, based on age and other common interests. In this group she finds her friends. Fine, normal, wholesome friendships are formed in the Naval service that long outlast enlistments, and are sources of helpfulness and enjoyment throughout life.

HOMOSEXUALITY DESTROYS A WOMAN'S SOCIAL STATUS AND HER SOCIAL FUTURE

I do not feel I have to emphasize to you how delicate a structure is a women's good name, or how easy it is to tarnish or destroy it.

A single act, or an association, may brand a woman as a sexual pervert. Society allows women more emotional demonstrations in public than it allows men. Women friends may embrace and kiss each other as they meet in public without causing suspicion or starting a whispering campaign. Such displays of emotion and friendship, however, must always be within good taste.

By her conduct a Navy woman may ruin her chances for a happy marriage. Friends should be chosen with great care. Friendships are best when they are carefully formed on the basis of similar ages and interests.

Homosexuals dread detection, social ostracism, and legal prosecution. If a woman gets entangled in homosexuality and is given an undesirable discharge or a dishonorable discharge from the Navy, she finds herself cut off from acceptable relationships with men and the companionship of normal women. She also finds it difficult to explain to her family and to her friends just why she is no longer in the Naval service. To get entangled with homosexuality means three things:

(1) The woman gambles with the possible destruction of her social life and future marriage.

(2) She will become the target of other homosexuals.

(3) All normal, decent people who know, or even who strongly suspect the facts will have nothing to do with her.

HOMOSEXUALITY DESTROYS A WOMAN'S CHARACTER

Homosexuality is a social offense, and is named a felony by law. Conventional

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fear of detection, blackmail, economic and social ruin, and legal prosecution and imprisonment.

People who engage in homosexuality fear exposure for there is always a witness (the other person). It is not possible to live under constant tension and fear, without seriously weakening one's moral fiber, mental and emotional stability.

Homosexuality destroys a woman's personal integrity. Little by little, the individual becomes more deeply entangled in the homosexual web. At first she wonders how it all happened. She reacts with confusion, shame and fear. She rationalizes that she was only a passive partner; that she really did not DO any thing. But she knows better. Then she faces the possibility of blackmail. She finds it easier to submit to homosexuality than to fight against it.

Experience indicates that the odds are heavy against her ever quitting. She slowly deteriorates in character, losing her power of will, and her integrity. Thus the deterioration and destruction of character and integrity are the end results of homosexuality. Even such gross crimes as robbery, suicide and murder often grow out of homosexuality.

HOMOSEXUALITY DESTROYS A WOMAN'S SPIRITUAL VALUES AND HER SPIRITUAL LIFE

Moral and ethical codes reaching far back into history are against any form of homosexuality. It is universally condemned by all religions. All nations who have given way to the practice of homosexuality have fallen and it is against the law of all civilized nations. The guilt associated with homosexuality is a barrier between the individual and God.

The Creator has endowed the bodies of women with the noble mission of motherhood and the bringing of human life into the world. Any woman who violates this great t by participating in homosexuality not only degrades herself socially but also destro the purpose for which God created her.

IN CONCLUSION: Let me emphasize the following:

It is important to recognize danger. It is foolish to expose yourself. Good sportsmanship and courage are never proved by taking unnecessary risks, flirting

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with danger, or "taking a chance!" Homosexuality is dangerous in all of its phases. The woman who takes any chances with it demonstrates only her own stupidity, never her courage or smartness.

We do not wish to alarm you about homosexuality, nor do we intend anything that we say in this lecture to lead you to believe that an unmarried woman who does not engage in sexual practices with men is homosexual. She is, on the contrary, a sensible person. Sex was created for the married state and true happiness can best be found through marriage and a home. We are confident that you will go on through life using common sense and self-discipline.

We would also like to emphasize again the need of avoiding vicious gossip and rumors accusing or implying that someone is a homosexual or engaging in homosexual acts. Before engaging in such talk or spreading such dastardly gossip about anyone, I would suggest that you think of two things. First, think of the terrible harm that may come to this girl and her family because of you. And secondly, ask yourself - How would I feel if someone were to spread such vicious rumors about me?

If you are actually approached by one of these people or if you strongly suspect something that is out of line, talk the matter over with someone who can do something about it without harming someone who may be innocent. Your Wave office, your Medical officer and Chaplain are always available for personal counsel. If you wish to discuss this presentation just given, please feel free to contact any of us who have given it or any of the above mentioned officers. Thank you for your attention.

643

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INDOCTRINATION OF MALE RECRUITS ON SUBJECT OF HOMOSEXUALITY

Part I - Line Officer's Section

GOOD MORNING! I am _____. The officer to my right/left is Dr. _____ and the one to my left/right is Chaplain _____. We would like to speak to you today about a subject with which very likely many of you have never been confronted.

OUR TOPIC - - - - - - - - - - - - - HOMOSEXUALITY

Now, this is a very serious subject. It is not a matter to be taken lightly nor joked about. The problem of homosexuality is one which could affect you not only as a member of the Navy, but throughout your entire life as well.

We learn every day from the newspapers, radio, television, our parents, schools and churches of many things both good and bad. This subject, however, is one which is not widely discussed through these media - or, for that matter, even among our own families. Today, therefore, we wish to discuss this subject quite thoroughly in order that you may be aware of the dangers of homosexuality and the problem which it presents the Navy. In so doing we don't want to scar you or search into your past, but we do want to inform you of a situation which does exist and what the Navy expects of you should you encounter it.

It is the Navy's intention that you receive authoritative information and straight forward facts. To this end I will discuss the Navy's attitude and policy toward homosexuality and the legal and disciplinary measures which the Navy will take in all such cases that are brought to light. Dr. _____ will talk about the subject from a medical and psychiatric standpoint, and Chaplain _____ will speak to you on the moral aspects of homosexuality.

To start with we immediately ask ourselves, "What is Homosexuality"? Well, it can be defined as an attempt to obtain sexual pleasure or enjoyment through a physical act or contact with another person of the same sex. As many of you already know, homosexual persons are frequently referred to as

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queers, fairies, pansies and other like terms.

Now the attitude and policy of the Navy toward the commission of homosexual acts is very clear and very positive. If anyone in the United States Navy is discovered, apprehended or proven to have engaged in any such act while in the Navy, whether one time or a hundred times, drunk or sober, whether his participation was active or passive, very serious consequences are inevitable. Remember, one act is sufficient to convict a man. And it makes no difference whether the person was drunk or sober nor where the act was committed, on board ship, at a shore station or on liberty in town. Nor does it matter who took the lead in the act. Both are equally guilty as far as the Navy is concerned. And once the Navy finds out appropriate disciplinary action must follow.

What action is taken against the Navy man who is caught and what are the inevitably serious consequences of such action? One thing is certain! He will be discharged from the service under extremely discreditable conditions. He will either face trial by General Court Martial with a sentence of up to five years imprisonment in a federal penitentiary followed by a Dishonorable Discharg or, under certain circumstances he may be allowed to accept an Undesirable Discharge in order to escape trial by General Court Martial. He, therefore, either becomes an ex-convict in the truest sense of the word or he carries a discharge paper bearing the statement that he was discharged from the United States Navy under other than honorable conditions and without satisfactory service. Either way, he has been literally kicked out of the service and the consequences of suc a separation are manifold. He has brought disgrace on himself, his family and h friends. He has lost virtually all his rights as a veteran under both Federal a State legislation. No government employment of any kind is open to him and he m indeed find it difficult to obtain decent employment with any civilian concern.

Why, you may ask, is the Navy so tough in its attitude toward homosexuality There are several reasons for this. First, homosexuals lower morale

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wherever they turn up. No decent individual wants them around, and this is especially true of the Navy where men must work and live so closely at all times whether ashore or on board ship. Secondly, homosexuals usually try to involve previously innocent persons in their acts. Many men have been ruined and disgraced from either deliberately or carelessly becoming involved with them. Thirdly, homosexuality is often associated with alcoholism, narcotics and acts of violence such as suicide, manslaughter and murder. And finally, homosexuals have been found to be poor security risks. There are many cases where enemy agents, themselves homosexuals, either have obtained or have tried to obtain security information through their homosexual contacts. The threat of exposure to a man who has become thus involved could indeed be a very powerful inducement to give away information involving the security of our nation. Quite obviously the Navy cannot and will not take a chance on such a person.

What are the chances of detection of a person engaging in homosexual acts? Of one thing you may be certain: He will eventually be found out. Homosexuals form a minority group that is outcast from our society. As individuals they are constantly trying to involve normal persons in their acts, and once this is accomplished the homosexual uses all kinds of pressure, including blackmail, to make them continue in these acts. Most homosexuals keep a list of all their contacts and pass these names along to others of their kind. It is also a peculiarity of homosexuals that they will freely give all details of their contacts to the law enforcement officers when picked up for questioning. It is, therefore, true that once having engaged in a homosexual act a person can never feel safe from detection. Remember, it takes two to engage in a homosexual act; therefore, by its very nature there is always a witness to such an act, and that witness will not hesitate to talk freely.

Now -- how could a normal, clean-minded young man get into such a mess? Let me cite an example, the case history of, shall we say, John Doe. Before joining the Navy he was a decent young man. In his home town he had never come in contact with homosexuals, nor, for that matter, did he know anything

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about them except in a very general way. He had heard about such people, but that was all. Naturally he would have laughed at anyone who told him he could get mixed up with a homosexual. He does not realize that a man is not born a homosexual, but that he becomes such by his own actions. Neither is he fully aware of how a little alcohol can befuddle one's thinking and how, after a few drinks, he might do things he would never think of doing when sober.

John is an excellent recruit, one of the best men in his company, and well liked by all his shipmates. At the end of his fifth week of training Recruit Doe rates liberty and catches a bus for town. Sitting next to him on the bus is a husky young civilian who engages John in a friendly conversation. This young civilian, learning that John is new in town and on his first liberty, offers to show him around. This sounds fine to John and he never suspects that his new found friend is actually a homosexual "on the make". He has always identified homosexuals in his own mind as being effeminate in their manner of speech, gestures and walk. After having done the town during the afternoon, this young man suggests going to his apartment for dinner after which he will line up a couple of girls for the evening. John is induced to have a few drinks while his friend appears to busy himself with dinner preparations and a number of naturally unsuccessful phone calls. Recruit Doe is completely unaware that this young man has no intention of lining up any girls but that instead he wants John for himself. John, not being used to liquor, becomes pretty well loaded. In this condition, the approach is made and John, unfortunately, becomes involved in homosexuality. Later on a routine police check of known homosexuals finds John's name in this individual's address book. It is turned over to the Naval authorities and, after appropriate investigation, Recruit Doe, his Naval career hardly even started, is kicked out of the Navy, disgraced and with a discharge paper he does not like to show.

Let me cite another example, this one concerning security. During World War II, a naval enlisted man was assigned a billet where he handled secret correspondence. Without thinking, he became involved with a civilian homosexual

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through, of all things, curiosity. This civilian, as it turned out, was not on
a homosexual but an enemy agent as well. The sailor, having been introduced to
homosexuality, was blackmailed by the civilian, under threat of exposure to the
authorities, to pass along certain security information to which he had access.
Meanwhile the civilian, having been suspected of espionage activity, had been
under constant surveillance by the Office of Naval Intelligence for some time.
When the ONI finally cracked down and all the facts of the case were brought to
light, the civilian was tried and convicted of espionage. The Navy man was tri
by General Court Martial and convicted of both espionage and the commission of
homosexual acts.

The cases I have mentioned illustrate only a few of the ways in which a Na
man can become involved with homosexuals and the tragic results of getting mixe
up with them. Homosexuals know no boundaries. You might run into them wherever
you go. They may turn up in bars, on the street, in buses and streetcars, in
parks and various places of entertainment and even in your own barracks or
aboard ship. If you are approached or propositioned by a civilian homosexual,
don't cause a scene but get away from him quickly and stay away. Should you
receive a homosexual proposition from anyone in the service or have knowledge
of the commission of a homosexual act by anyone in your ship or unit, it becomes
your duty and responsibility to make the situation known to your Company Comman
Battalion Commander, Division Officer, Department Head or other person in author
as soon as possible.

In concluding my part of this lecture, I should like again to stress severa
important points:

(1) First of all, committing a homosexual act is a criminal offense.
Separation from the service is mandatory and this will be carried out either
through trial by General Court Martial with a possible sentence of up to five ye
imprisonment and a Dishonorable Discharge, or under certain circumstances, by an
Undesirable Discharge.

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(2) Secondly, both parties to a homosexual act are equally guilty. The Navy makes no distinction and alcohol is never accepted as an excuse.

(3) Thirdly, stay away from those places which you suspect or which are known to be hangouts for homosexuals. Even by being frequently seen in such places, you could be caused considerable embarrassment by having your name placed on the local police list and consequently picked up for questioning should a sex crime be committed in the area.

(4) And finally, don't associate with strangers who are too persistent in being nice to you. Now that doesn't mean that every stranger who offers you a drink or a free meal is a homosexual; but by remaining sober and alert and using common sense you will be able to suspect when something is out of line. Act accordingly!

The Navy Department is the constant target of tearful appeals from the parents, families and friends, and even from the men themselves, who have been discharged from the Navy with discredit. They are asking for relief from the type of discharge received. They claim that the Navy has branded them as homosexuals and that they have been disgraced and cannot get decent jobs. Actually, the Navy has not branded these people. They have branded and disgraced themselves and no relief is possible. You cannot participate in homosexuality without sooner or later getting caught and men who engage in homosexual acts cannot and will not be tolerated by the United States Navy.

Now, may I present Dr. _____ who will speak of the medical and psychiatric aspects of homosexuality? Dr. _____.

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INDOC—NATION OF MALE RECRUITS ON H—XUALITY

MEDICAL OFFICER'S SECTION

The medical officer, particularly one that specializes in psychiatry, is interested in homosexuality as an abnormal form of human behavior. While the d of the medical officer are principally those of understanding and caring for si people, he must maintain the broad point of view which is directed to the under standing of all types of behavior -- good and bad, normal and abnormal, individ and group. This does not mean that he approves or excuses homosexuality any mo than he does any type of behavior which is socially unacceptable such as thieve alcoholism, and drug addiction.

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By virtue of the f[illegible]hat you are now in the Navy, [illegible]are considered grown-up and adult behavior is expected of you. If such behavior is not forthcoming, you will be held accountable. To pause one moment and think -- this is not unlike civilian life where cultural, social, and educational influences serve as a constant curb to a person's wishes, desires, and actions which are considered as not being mature or grown up.

Some individuals, under various and possibly innocent circumstances, may become involved or participate in a homosexual act. They then contend that they themselves are not "homosexual" and offer this as a defense of their behavior. Medically speaking this may be true but from the Navy's point of view such a medical opinion makes no difference whatsoever. In the Navy, you are not accused of being "homosexual" but are accused of engaging in a homosexual act. Obviously, it takes two to comprise a homosexual act and, in so far as the Navy is concerned, one party of the act is as guilty as the other of an offense against the naval organization and its social structure.

Several common misconceptions exist about homosexuality and it is these misconceptions which lead people into trouble. One such misconception is that it is easy to identify a practicing homosexual by his feminine mannerisms and characteristics. This is not true. The majority of practicing homosexuals are quite masculine in appearance and some are outstanding athletes.

Another common misconception is that those who engage in homosexuality are safe from acquiring venereal disease. This also is not true, as both gonorrhea and syphilis can be readily contracted through homosexual relations. From the clinics of several large cities, survey reports indicate that one out of every four cases of venereal disease admitted for treatment acknowledge homosexual contacts as the source of the infection. Practicing homosexuals are notoriously promiscuous and not very particular in whom they pick up -- infected or otherwise.

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And now let me introduce Chaplain _____ who will speak on the social, moral and spiritual effects of homosexuality.

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CHAPLAIN'S PRESENTATION (MALE HOMOSEXUALITY)

The Chaplain's primary concern with the problem of homosexuality is its relationship to the individual's social, moral and spiritual life. The following factors often play a prominent role in the involvement of personnel in homosexual activity:

1. The normal desire for social life and entertainment. The practicing homosexual is quite aware that service personnel ashore are often lonely and frequently quite ready to accept courtesies and hospitality even though offered by a stranger.

2. Social drinking is one of the most frequently used techniques of homosexuals and is often the opening play of a game that leads to the downfall of the sailor.

At most we hear the familiar refrain: "I got to drinking with this individual and passed out. When I came to, the job had been done." The Chaplain is always sorry for the man who gets into trouble. However, the Chaplain's primary concern with homosexuality is its relationship to the individual's social, moral, and spiritual life.

FIRST OF ALL, HOMOSEXUALITY DESTROYS A MAN'S SOCIAL STATUS:

A single act, or even guilt by association, may brand a man as a pervert in the locality in which he lives. To be arrested, booked, and have to prove one's innocence when caught in a raid of a place where homosexuals gather, may be the basis for general and harmful gossip.

Homosexuals dread detection, social ostracism, and legal prosecution. If a man gets smeared or entangled in the homosexual web, and is given an undesirable or a dishonorable discharge from the U. S. Navy, he finds it highly embarrassing, if not impossible, to explain to his family and friends why he is no longer in the Naval service.

Once it is known, or strongly suspected that a man has been discharged for homosexuality, people will avoid him and he will be socially ostracized.

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To get entangled in the homosexual web means two things:

(1) The individual will become the target of other homosexuals, and

(2) Decent people who know or strongly suspect homosexuality will shun him.

HOMOSEXUALITY ALSO DESTROYS A MAN'S CHARACTER

Homosexuality is a social offense. It is not condoned by society. It is named a felony by law. Conventional society detests the homosexual. The homosexual lives in a continuous dread and constant fear of detection, social ostracism, blackmail, and economic ruin, and legal prosecution and imprisonment.

Most people who engage in homosexuality suffer a period of fear of exposure, disgust with themselves, and a deep sense of uncleanliness. For a time they seek to adjust themselves to the condition which they have brought upon themselves by their own conduct. It is not possible, however, to live under constant tension and fear, acting out a role through a prolonged period, without seriously weakening one's moral fiber.

The practice of homosexuality destroys a man's personal integrity. Little by little the individual becomes more deeply entangled in the homosexual web. At first he wonders how it all happened. He reacts with confusion, shame, and fear. He rationalizes that he was only a passive agent; that he really did not do anything. But he really knows better.

Then he may face blackmail and he continues his acts. He finds that it is easier to submit than to fight on against it. He consoles himself that he will break off the relationship later, but he really has little hope of actually doing so. Experience indicates that the odds are heavily against his ever quitting. He slowly deteriorates in character, losing his power of will and his personal integrity. He therefore often becomes a drug addict, an alcoholic, a thief, or even a murderer or suicide. He joins the dregs of society. Thus the deterioration and destruction of character and integrity are the end results of homosexuality.

HOMOSEXUALITY ALSO DESTROYS A MAN'S SPIRITUAL VALUES AND HIS SPIRITUAL LIFE

Moral and ethical codes reaching far back into history are unequivocally opposed to

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any form of homosexuality. It is universally condemned by all religions. Since the body is the sacred temple of God, any misuse of sex is a desecration of God's holy temple. Therefore, the commission of a homosexual act is a sin.

All nations which have given way to the practice of homosexuality have fallen. Homosexual practices have contributed to their moral decay and thus to their downfall. The Scriptures say, "Righteousness exalteth a nation, but sin is a reproach to any people."

Today, as a result of scientific progress man is able to do great things. He is able to fly faster than sound. Through television, he is able to see things actually happening thousands of miles away. He is able to speak to his fellowman by radio and telephone throughout the entire world. None of these powers, however, can begin to compare with that power given to him by his Creator, namely, the power of bringing another human being into the world through the proper use of his sexual drives. Any individual who would use this God-given power in any manner contrary to God's law not only degrades himself morally and spiritually but violates a most sacred trust. This is especially true in the case of homosexuality.

Both the Jewish and the Christian faiths regard homosexuality as abnormal, immoral and as a carnal sin. It must, therefore, be avoided. The most severe condemnation is pronounced by religion on all homosexuality. The breaking of God's laws in sexual matters is a direct frustration of His will for us and the defilement of our bodies as a suitable abode for his presence. Persistence in such practices begets moral and spiritual suicide.

The Holy Writ or Holy Scriptures condemn homosexuality. The account of the destruction of Sodom in the Bible shows the Scriptural disapproval of the act. There are other references which your Chaplain can give you. Let me emphasize these points

1. It is smart, and the part of wisdom, to recognize danger. It is foolish to expose yourself to danger needlessly. Courage is never proven by taking foolhardy risks or flirting with danger. Homosexuality is dangerous in any of its phases. Anyone who takes chances with it only proves his own stupidity, never his courage or his manhood.

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2. As we said before, the purpose of this talk is not to frighten you or to delve into your past. Keep up your normal friendships with your buddies in the service. And don't feel that every stranger, civilian or military, who tries to friendly, is out for no good. Be very careful about making remarks implying or accusing a person of being a homo or a queer. Before you make such an accusation think of the harm you can do to a man and his family and think also how you would like that same man to make the same charge about you. By being alert to the possibility of meeting homosexuals, your common sense will tell you when you do meet a person who is one or very likely could be one. When that situation arises get away from him quickly and quietly.

If you are actually approached or feel almost certain that you have run into such a situation, talk the matter over with your Company Commander, your Battalion Commander, your Medical Officer or Chaplain. If you wish to discuss this presentation today, feel free to contact any of us who have given it or any of the men mentioned above. Thank you for your attention.

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